

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29295 of 2013

Arising Out of Complaint Case No. -C682 Year- 2012 Thana –Ram Nagar District-
WESTCHAMPARAN(BETTIAH)

=====

Vikash Kumar Mishra @ Vikash Mishra S/o Late Markandey Mishra, resident of
mohalla- Gobraura, Police Station- Lauria, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ramjee Chaudhary S/o Late Dhanai Nuniya, resident of village- Mathiya, Police
Station- Ram Nagar, District- West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : M/s Bashishtha Nr. Mishra and B.K. Misra, Advs.

For the Opposite Party No.2: Mr. Vijay Kr. Singh No. 1, Adv.

For the State Mr. H. Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-10-2017

1. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 22nd February 2013 passed by the learned Judicial Magistrate, Bagaha, West Champaran in Complaint Case No. C682 of 2012 whereby and whereunder the learned Magistrate finding *prima facie* case, took cognizance against the petitioner for the offences under sections 420 and 427 of the Indian Penal Code.

2. Heard learned counsel for the petitioner, learned counsel for the opposite party no. 2, learned Additional Public Prosecutor and perused the record.

3. The opposite party no. 2 filed a complaint case on the



file of learned Chief Judicial Magistrate alleging *inter alia* that this petitioner fraudulently and illegally executed the sale deed in favour of the accused nos. 2 to 8 with respect to the land belonging to him. The land in question was coming in possession of complainant since long which was given under land ceiling proceeding.

4. The learned counsel for the petitioner submits that the land in question was purchased by his father Markendey Mishra by virtue of registered deed dated 25.07.1962 and since then, his family was coming in possession. After death of his father, he inherited the land and he having right, title and possession has sold the same to accused nos. 2 to 8 and 10 to 12. The said land was subject matter of Ceiling Case No. 109 of 1975-76 and it was given in the unit of land holder Madhusudan Mishra who was Grandfather of this petitioner. The land in question was not surplus land and so it was sold by the petitioner bona fide. The learned Magistrate without applying judicial mind, has taken cognizance in mechanical manner and so the impugned order is fit to be quashed.

5. The learned counsel for the opposite party no. 2 as well as learned Additional Public Prosecutor on the other hand opposed the submission.

6. On perusal of complaint petition and document on record, I find that the petitioner claims to be rightful owner of the said



land. It is not in dispute that the land originally belonged to the grandfather of this petitioner. Initially the land was held surplus land, but on objection, the land was removed from the ceiling proceeding. The petitioner claims that he bona fide executed the sale deed in the capacity of bona fide owner. In this connection, I would like to refer a Ruling reported in **2009 (4) PLJR 99 (Md. Ibrahim vs. State of Bihar)** wherein the Hon'ble Apex Court has considered the scope of different sections of the Indian Penal Code and held that the sale deed is executed conveying a proper deed claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser rather by a person claiming right by virtue of settlement from Government. The petitioner however claims to be owner by virtue of inheritance and executed sale deed in favour of other persons In this regard it would be relevant to quote paragraph-14 of the said judgment:-

Para-14 - When a sale deed is executed conveying a proper deed claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently



induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reasons of being the witness, scribe the stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419, or 420 of the Code.

7. The complainant claims the land by virtue of settlement from the State Government whereas the petitioner claims by virtue of inheritance. The dispute between the parties appears purely a civil dispute which can be adjudicated only in a full-fledged trial. Petitioner executed document in the capacity of owner and so it cannot be a case



of cheating. The criminal prosecution of this petitioner considering the nature of dispute, appears to be misuse of process of Court.

8. In view of above discussion and also the principle laid down **by** the Hon’ble Apex Court in above case, the order dated 22nd February 2013 taking cognizance is fit to be quashed.

9. Accordingly, this criminal miscellaneous application is allowed and the order dated 22nd February 2013 passed by the learned Judicial Magistrate, Bagaha, West Champaran in Complaint Case No.C682 of 2012 as well as criminal prosecution of this petitioner, is quashed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.10.2017
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