

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40150 of 2012

Arising Out of PS.Case No. -891 Year- 2011 Thana -null District- WEST CHAMPARAN
(BETTIAH)

- =====
1. Govind Prasad Rajgarhia, son of late Suraj Mal Rajgarhia.
 2. Nishant Raj, son of Sri Govind Prasad Rajgarhia
Both Resident of Mohalla- Lal Bazar, Bettiah, P.O and P.S.- Bettiah, District- West Champaran.
 3. Manohar Lal Karn, son of late Narayan Lal, Resident of Mohalla- Kali Bagh, P.O and P.S.-Bettiah, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sikandar Yadav, son of Sri Sheo Nath Yadav, Resident of village and P.O Daniyal Parsauna, P.S.- Sathi, District- West Champaran, Holder of Power of Attorney of Sri Pramod Kumar Rajgarhia, son of late Gulab Chand Rajgarhia, Resident of Mohalla- Lal Bazar, Bettiah, P.O and P.S.- Bettiah, District- West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nawnit Kumar Tiwari, Advocate.

For the Opposite Party/s : Mr. Ashok Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

C.A.V. JUDGMENT

Date: 07-11-2017

Heard learned counsel for the petitioners and learned counsel for the State.

2. The petitioners seek quashing of order dated 18.07.2012 passed by the Judicial Magistrate, 1st Class, Bettiah in Complaint Case No. 891(C) of 2011 thereby taking cognizance of offence under Sections 465 and 506 of the Indian Penal Code against the petitioners.

3. The complainant of the case has filed present complaint in capacity of power of attorney holder on behalf of



Pramod Kumar Rajgarhia. The fact stated in complaint petition is that all four accused persons of the complaint including these three petitioners as well as one Birendra Prasad Srivastava, after entering into conspiracy, created forged document in order to grab the landed property of Pramod Kumar Rajgarhia, as in Partition Suit No. 46 of 2009 filed by him, Govind Prasad Rajgarhia has filed a document showing Pramod Kumar Rajgarhia, son of Mohan Lal Rajgarhia. That document is a sale deed executed in favour of accused Ram Chandra Ram and another sale deed in favour of one Sita Ram Sharma, but these are ghost persons. Likewise, several documents have been filed relating to the land in dispute sold in favour of some persons. It is also alleged that accused Birendra Prasad Srivastava has created a forged document of power of attorney executed by Bimal Kumar in his favour.

4. Learned counsel for the petitioners submits that complaint was filed on 09.05.2011 and the complainant was examined before the court on solemn affirmation on 26.06.2011 in which he admits that Pramod Rajgarhia has compromised the case with the accused persons. He also admits that he was holding power of attorney with respect to the land of Pramod Kumar Rajgarhia situated at Ujjain Tola, Bettiah and the witnesses examined at the enquiry stage after filing of the complaint case, Pramod Kumar Rajgarhia has



withdrawn the power of attorney earlier given to the complainant and now he has given a fresh power of attorney to Birendra Prasad Srivastava, one of the accused of this complaint case, by a registered deed of general power of attorney dated 12.05.2011 and subsequently has also filed a petition for his substitution as complainant in the present case. It is further submitted that Pramod Kumar Rajgarhia had given power of attorney to Sikandar Yadav, the complainant only for looking after a particular land, after knowing that he has filed a Partition Title Suit No. 46 of 2009 on his behalf, soon after he revoked the power of attorney given in favour of Sikandar Yadav and a fresh power of attorney was given to Birendra Prasad Srivastava and the enquiry witnesses have admitted that now Pramod Kumar Rajgarhia has compromised the case with the accused persons; even in Title Partition Suit No. 46 of 2009 Birendra Prasad Srivastava has been substituted in place of Sikandar Yadav. Learned counsel further submits that filing of the documents by the defendants of the said partition suit is alleged to be forged but those documents are before the court and there is no any specific allegation that in what way the document is forged, so document filed in the said partition suit does not come within the purview of making of false documents. The dispute is civil in nature as a partition suit is going on and the petitioners no. 1 and 2 , being father and son, are co-sharers of



Pramod Kumar Rajgarhia and already the sale deeds which have been filed in the partition suit is under the scrutiny before the competent court of civil jurisdiction. It is also submitted that Birendra Prasad Srivastava, now the complainant of the present complaint case in place of Sikandar Yadav, has filed a withdrawal application for withdrawal of the present complaint case. The entire allegation even taken in entirety and the material transpiring during the enquiry do not disclose any *prima facie* offence of forgery and of criminal intimidation.

5. Contrary to that, learned counsel appearing on behalf of the O.P. No. 2 submits that a *prima facie* case is made out against the petitioners and a criminal as well as civil case may be proceeded together against them in the present facts of the case.

6. Having considered contrary rival submissions and on perusal of record, the Court finds that complainant filed this complaint case as well as Partition Suit No. 46 of 2009 on behalf of Pramod Kumar Rajgarhia, who had executed power of attorney in his favour but after filing of the complaint petition and the partition suit by the complainant Sikandar Yadav, power of attorney, given to him, was revoked by Pramod Kumar Rajgarhia on 12.05.2011, thereafter executed a fresh power of attorney in favour of Birendra Prasad Srivastava, who also happens to be one of the accused in this case and



also petition for withdrawal of the protest complaint case has been filed. Moreover, the allegation relates to filing of some sale deeds by the accused persons in Partition Suit No. 46 of 2009, which is alleged to be forged but the allegation is vague as no specific averment is made describing in what manner these documents were forged. Besides this, documents, already filed by the accused persons, being defendants in the said partition suit, is under scrutiny of the civil court of competent jurisdiction and petition for withdrawal of the complaint too has been filed in this case on 28.05.2011, so in absence of any ingredients of offence under Sections 465 and 506 of the Indian Penal Code, continuation of the criminal proceeding would be an abuse of the process of the court, hence, the entire criminal proceeding inclusive of the cognizance order dated 18.07.2012 passed in Complaint Case No. 891(C) of 2011 by the Judicial Magistrate, 1st Class, Bettiah only with respect to the petitioners herein, is hereby quashed.

7. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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