IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19154 of 2013

Arising Out of PS.Case No. -616 Year- 2011 Thana -GOPALGANJ COMPLAINT CASE District-GOPALGANJ

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1. Shail Devi Wife Of Byas Tiwari
2. Byas Tiwari, Son of Late Ansarfi Tiwari.
3. Raj Banshi Bhagat, Son of Late Sheo Ratan Bhagat.
4. Fulpati Devi, Wife Of Rajbanshi Bhagat .
5. Raj Kishore Tiwari, Son of Late Vishwanath Tiwari.
6. Satish Tiwari, Son of Ramashray Tiwari

   All are residents of village Matauli, P.S. Sidhwalia, District Gopalganj
7. Malti Devi, D/O Late Rajdeo Tiwari, Wife of Sheo Kumar Tiwari
8. Shyam Sunder Tiwari, Son of Sheo Kumar Tiwari,

   Both are residents of village Sanikurwa, P.S. Barhariya, District Siwan

.... Petitioner/s

Versus

1. The State of Bihar
2. Akhileshwar Kumar Tiwari, Son Of Sri Ram Chandra Tiwari, Resident of Village Matauli, P.S. Sidhwalia, District Gopalganj

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar Sinha No. 3, Advocate.
For the State	:	Mr. C.M.Prasad, A.P.P.
For the O.P. No. 2	:	Mr. Rajendra Narain, Sr. Advocate. Mr. Bijay Shankar Choubey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 07-11-2017

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the O.P. No. 2.

2. The petitioners, invoking inherent jurisdiction of the Court under Section 482 of the Code of Criminal Procedure, seeks

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quashing of order dated 23.03.2013 passed by the 2nd Additional Sessions Judge, Gopalganj in Cr. Revision No. 140 of 2012 whereby he affirmed the order taking cognizance dated 07.01.2012, under Sections 417, 420 and 465 of I.P.C., passed by the Judicial Magistrate, 1st Class, Gopalganj in Complaint Case No. 616 of 2011 consequently dismissed the revision application.

3. A brief fact giving rise to the case is that complainant-O.P. No. 2 filed a Complaint Case No. 616 of 2011 in the court of learned Chief Judicial Magistrate, Gopalganj, alleging therein that complainant's father were three brothers and his grandfather were two brothers, one of the brothers namely Srinath Tiwari died issueless and gifted his all property to the brothers of the complainant's father. Rajdeo Tiwari, the eldest brother of the complainant's father, who also happened to be the *Karta* of the family. Later on, a partition Suit No. 15 of 1992 was filed thereafter Title Appeal No. 48 of 1998 is still *sub judice* as pending in the Fast Track Court-4. In the meanwhile, Rajdeo Tiwari died leaving behind his only issue his daughter, Malti Devi, the sole successor, who is also one of the parties in the aforesaid title appeal. The complainant learnt that Vyas Tiwari has got a sale deed executed in favour of his wife Shail Devi by Malti Devi, a mentally retired person. Later on he learnt that she also executed a sale deed with respect to another piece of land to Phoolpati

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Devi, wife of Rajbanshi Bhagat, though Malti Devi had only 1/6th share in the joint property. It is alleged that all accused persons coming into conspiracy have created forged sale deed.

4. Learned counsel for the petitioners submits that allegation is that Malti Devi, one of the admitted co-sharers, had sold a part of the land of her share in the joint property though the title appeal is pending against the judgment passed in Partition Suit No. 15 of 1992, so even taking the entire allegation in entirety made in the complaint, no *prima facie* ingredient of cheating or making of a forged document is made out. It is also submitted that nothing is on the complaint or on the record that Malti Devi is mentally retarded.

5. Perused the record. Offence of cheating is defined under Section 415 of the Indian Penal Code, which reads as such:

> "415.- Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is aid to "cheat"."

6. In the backdrop of the facts alleged in the complaint, there is no allegation of any deception or fraudulent or dishonest inducement to the complainant and delivery of any property by the

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complainant to anybody else. Section 420 IPC is also aggravated form of cheating, so once a *prima facie* ingredient of cheating is not made out, this offence is also not attracted. Section 467 IPC reads as such:

> "467. Forgery of valuable security, will, etc.- Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".

7. The first and foremost ingredient to constitute an offence under this section is to create a forged document, which purports to be a valuable security or a will or an authority to adopt the son, or which gives authority to any person to make or transfer any valuable security or for receiving the principal, interest or dividends or to receive or delivery any money, moveable property or valuable security. However, forgery is defined under Section 463 IPC i.e., of making a false document which is defined under Section 464 IPC, which reads as follows:

> "464. Making a false document.- A person is said to make a false document or false electronic record-

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First- Who dishonestly or fraudulently-

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the executing of a document or the authenticity of the electronic signature,

With the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not known the contents of the document or electronic record or the nature of the alteration."

8. No such ingredient is found of making a false document in the background of the facts of the present complaint. In

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the case of ***Mohammed Ibrahim & Ors. v. State of Bihar & Anr.*** reported in ***(2009) 8 SCC 751***, the Hon'ble Apex Court has clarified in para 23 of the judgment, which is quoted hereinbelow:

> "23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint".

9. So, in view of aforesaid observation, if a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. In the present case, there is no such complain by the purchaser rather purchasers are also accused along with the seller. Here, Malti Devi, co-sharer, had executed a sale deed in favour of other co-accused of this case, whose husband has also been made accused being attesting witness. Even there is no material to show *prima facie* that Malti Devi is mentally

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retarded person rather she is a party in the suit as well as appeal. So, *prima facie,* no ingredient of offence under Sections 417, 420 and 465 IPC is made out even if the entire allegation levelled in the complaint is taken into consideration.

10. However, learned counsel appearing on behalf of the O.P. No. 2 submits that this quashing application is not maintainable for the reason that already against the cognizance order, accused person have preferred a revision before the Sessions Court and the same was dismissed, so this amount to second revision. Learned counsel for the O.P. No.2 places reliance on an order dated 10.10.2012 passed by a coordinate bench of this Court in Cr. Misc. No. 19057 of 2010 (Bhola Saw @ Bhola Kumar Gupta & Ors. vs. The State of Bihar & Anr.). The Court observed in this case as such:

> "…….. After rejection of revision petition, the petitioners had filed present petition in the garb of Section 482 of the Code of Criminal Procedure, which primarily amounts to second revision, which is not permissible under Section 397(3) of the Code of Criminal Procedure. Moreover, the complaint petition discloses offences, for which, cognizance order ahs been passed".

11. The observation made in Cr. Misc. No. 19057 of 2010 is not the correct proposition of law. Section 482 Cr.P.C. provides the inherent power to the High Court. Section 482 reads as such:

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> “482. Saving of inherent power of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice”.

12. This section starts with emphasis that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make any such order as may be necessary to give effect to any order under the Criminal Procedure Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. So in view of the provision itself, there is no bar to entertain a quashing application for setting aside the cognizance order even if cognizance order was challenged before the Sessions Court successfully. The Court has perused the impugned order passed by the learned Additional Sessions Judge in Cr. Revision No. 140 of 2012. The learned Additional Sessions Judge has not given any reason while dismissing the revision application, save and except, a vague observation that there exists sufficient ground for proceeding. The court has earlier observed in its judgment that even if taken into consideration the entire allegation levelled in the complaint, as no ingredient of any offence of cheating or committing forgery is made out under Sections 415, 417, 420 and 465 of the Indian Penal Code, so in such a situation, continuance of the criminal proceeding in the court

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below would be abuse of the process of the court. Hence the entire criminal proceeding of Complaint Case No. 616 of 2011 pending in the court of Sri A.K.Mall, Judicial Magistrate 1st Class, Gopalganj inclusive the cognizance order dated 07.01.2012 is hereby quashed.

13. The application stands allowed.

(Arun Kumar, J)

Sujit/-

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