IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17399 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- GOPALGANJ

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1. Raj Balam Ram, S/O Late Indrasan Ram R/O Vill-Pipra, P.S.-Manjhagarh, Distt-Gopalganj
2. Most. Sankesiya Kuwar W/O Late Munnilal Sharma R/O Vill-Pipra, P.S.-Manjhagarh, Distt-Gopalganj
3. Gopal Sharma S/O Late Munnilal Sharma R/O Vill-Pipra, P.S.-Manjhagarh, Distt-Gopalganj
4. Chandradeep Ram S/O Late Manager Ram R/O Vill-Pipra, P.S.-Manjhagarh, Distt-Gopalganj
5. Umesh Ram S/O Chandradeep Ram R/O Vill-Pipra, P.S.-Manjhagarh, Distt-Gopalganj
6. Sunil Kumar S/O Ram Naresh Lal R/O Vill-Bakhraur, P.S.-Barauli, Distt-Gopalganj

.... Petitioners

Versus

1. The State Of Bihar
2. Mohibul Hasan @ Ahibul S/O Late Ahmad Hussain R/O Vill-Pipra, P.S.-Majhagarh, Distt-Gopalganj, At Present Resident Of Village-Kamalpur, P.S.-Baruli, Distt-Gopalganj

.... Opposite Parties

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Appearance :
For the Petitioners : Mr. Satish Chandra Mishra, Advocate
For the Opposite Parties : Mr. Raj Dular Sah, Advocate
For the State : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 24-04-2017

This quashing petition is filed by the petitioners Raj Balam Ram and others, who are accused in Complaint Case No.2321 of 2009 against the order dated 14.12.2009 passed by the learned Judicial Magistrate, 1st Class, Gopalganj taking cognizance against the petitioners under Sections 420 and 120B of the Indian Penal Code.

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2. A brief fact of the case is that the complainant-opposite party no.2, Mohibul Hasan purchased the land in question from Bhikhari Ram and Indrasan Ram, father of Raj Balam Ram (Accused No.1) in the year 1980. Now it is alleged that Raj Balam Ram has again sold the same land to Most. Sankesiya Kuwar and Chandradeep Ram (Accused Nos.2 and 4) respectively of the complaint case. Rest other accused persons and witnesses are identifiers on the sale deed.

3. Learned counsel appearing on behalf of the petitioners submits that the father and uncle of Raj Balam Ram had not executed any sale deed with respect to the land in question to the complainant. If there is any such deed, the same is a forged deed. He further submits that the learned court below has taken cognizance under Sections 420 and 120B of I.P.C., but no prima facie case under aforesaid sections is made out against the petitioners in the backdrop of factual matrix of the case because there is no element of deception or fraudulent dishonest inducement to the complainant leading to delivery of property or valuable security; because the complaint is not filed by the purchasers of the sale deed executed by Raj Balam Ram rather vendors are made accused along with witnesses and identifiers.

4. Learned counsel for the petitioners has placed reliance on a decision reported in **2015(1) PLJR (SC) 120 [Binod**

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Kumar & Ors. vs. State of Bihar & Anr. It is also submitted that the complainant of the case Mohibul Hasan-Opposite party no.2 of the instant petition has filed a title suit against Raj Balam Ram and his purchasers vide Title Suit No.408 of 2009, which was filed prior to the institution of the present complaint case.

5. Learned counsel appearing on behalf of the opposite party no.2 and learned A.P.P. submits that allegations made in the complaint do make out a prima facie case of cheating and there is no bar in pursuing criminal case as well as a civil suit in the present facts of the case.

6. Having considered rival submissions and on perusal of material on record, I find that in the present case and looking at the allegation in the complaint reveals that Raj Balam Ram, petitioner no.1 executed a sale deed in the year 2009 with respect to the land in question in favour of Most.Sankesiya Kuwar and Chandradeep Ram. Rest other petitioners are witnesses and identifiers of the sale deed whereas the case of the complainant is that the said land was already earlier sold to him by father and uncle of Raj Balam Ram, petitioner no.1 in the year 1980. Section 420 of I.P.C. is defined as follows :

> **"420. Cheating and dishonestly including delivery of property.-** Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or

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> destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

7. So the ingredients of the sections are as follows :

(1) There should be fraudulent or dishonest inducement of a person by the accused.

(2)(a) The person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property.

(b) The persons so deceived should be intentionally induced to do or to omit to do anything which he would not do or omit, if he were not so deceived and,

(3) In cases of such act of omission should be one which causes or is likely cause damage or harass to the person induced in body mind, reputation or property.

8. Applying whether these ingredients are available in the instant case, there appears absence of fraudulent or dishonest inducement to Mohibul Hasan-complainant-opposite party no.2 of the present petition. If the land in question already earlier purchased by the complainant from father of uncle of Raj Balam Ram is again

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resold by Raj Balam Ram, then loss or damage is caused to the purchasers by deception, who are accused in the present complaint case. The question of right and title can only be decided by a competent Civil Court with respect to the land in question between the parties. Therefore, in that backdrop of the case, the continuation of criminal proceeding would be abuse of the process of the Court. Therefore, the impugned order and the subsequent proceeding in the court below is set aside.

9. In the result, this quashing petition is allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27-05-2017
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