

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24619 of 2011

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

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1. Md. Sadaruddin Khan, S/O Late Hasan Khan, R/O Durgapur Laliyahi, P.S. & Distt. -Katihar.
 2. Md.Jainuddin Khan, S/O Late Hasan Khan R/O Durgapur Laliyahi, P.S. & Distt. -Katihar.
 3. Md.Ainuddin Khan, S/O Late Hasan Khan R/O Durgapur Laliyahi, P.S. & Distt. -Katihar.
 4. Md.Jamaluddin Khan S/O Late Sirajuddin R/O Durgapur Laliyahi, P.S. & Distt. -Katihar.
 5. Om Prakash Yadav S/O Ram Pravesh Yadav R/O Vill. O - Para, Rpf Barrak P.S. And Distt. - Katihar.
 6. Dinesh Yadav S/O Late Ram Chandra Yadav R/O Vill. O - Para, Rpf Barrak P.S. And Distt. - Katihar.

.... Petitioners

Versus

1. The State Of Bihar
2. Shamsul Haque S/O Saudagar Mian R/O Vill. - Sharifganj, P.S. And Distt. - Katihar.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Bhola Prasad, Advocate Mr. Mukesh Kumar Jha, Advocate
For the O. P. No. 2	:	Mr. P.K. Jaipuriyar, Advocate
For the State	:	Mr. Dashrath Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 14-09-2017

Heard learned counsel for the petitioner, learned counsel appearing on behalf of O.P. No.2 and also learned A.P.P. for the State.

2. This application has been filed under Section 482 of the Code of Criminal Procedure to quash the order dated 20.04.2011 passed in Complaint case No. 2681 of 2008 (Tr. No. 2032 of 2011), whereunder the Judicial Magistrate, 1st Class, Katihar summoned the accused petitioners, on enquiry, under Section 204 of the Code of Criminal Procedure finding prima facie



case under Section 465 of the Indian Penal Code.

3. The fact leading to this application is that O.P. No.2 Shamshul Haque filed Complaint Case No. 2681 of 2008 in the Court of Chief Judicial Magistrate, Katihar to the effect that his wife Bibi Rauna Khatton got mutated her name of Plot No. 1364 and 1543 of R.S. Khata No. 151, Area 6 Acares 2 decimals and she paid rent since 1983 to 1987. The said land is detailed in Municipal survey as Khesra Nos. 1629, 1630, 1631, 1637, 1638, 1640, 1641, 1717, 1718, 1795, 1827, 1828, 1829, 1833, 1835, 1836/2408 and 1922, Area 1 Hectre, 99 Air, 20 point under Khata No. 121. In the light of the order dated 02.08.2000 passed in C.W.J.C. No. 3213 of 1990 of the Patna High Court, 1/16 land of the said land was declared in the name of one Abdul Kadir, son of Late Md. Miya and remaining 15/16 was allocated in the name of his wife Bibi Rauna Khatoon. Later on, Abdul Kadir under Panchayat also gave his 1/16 land of the aforesaid M.S. Khata to his wife saying that his name is illegally recorded in the Municipal Corporation. Thereafter, on 24.06.2000 Bibi Rauna Khatton, wife of the complainant/O.P. No.2 executed power of attorney in his favour because several civil disputes arose in respect to said land and at present Partition Suit No. 01 of 1979 is pending in the Court of Sub-Judge-III, Katihar, which is filed by him against his wife, cousin Abdul Kadir and others. His cousin Abdul Kadir has illegally executed the agreement to sale on 08.12.1980 about 10 bigha of land covering in Partition Suit No. 01 of 1979 to execute the sale deed after disposal of the Partition Suit No. 01 of 1979. But without waiting the result of the



said partition suit, accused-petitioner Nos. 1 to 4 filed the Title Suit No. 27 of 1989 against Abdul Kadir for execution of the sale deed in terms of agreement to sale executed by him and also got decree to Court of the Sub-Judge-III, Katihar. Accused petitioner Nos. 1 to 4 also filed the Intervener Petition in the Partition Suit No. 01 of 1979 on 30.06.2000 and got separated 10 bigha of land and later on also got deleted their names to the array of the parties. The said order was challenged before the Patna High Court in Civil Revision No. 1994 of 2000 in which on 26.07.2001 the order dated 30.06.2000 passed in Partition Suit No. 01 of 1979 was stayed. In spite of that accused-petitioner Nos. 1 to 4 taking to collusion to the Circle Officer, Katihar got mutated their names and also sold the parts of the land to several persons, who came in possession. Later on, the order dated 30.06.2000 passed in Partition Suit No. 01 of 1979 was set aside in Civil Revision No. 1994 of 2000 vide Judgment dated 09.03.2006. On the basis of order dated 09.03.2006 passed in Civil Revision No. 1994 of 2000 by the Patna High Court his wife Bibi Rauna Khatton filed case No. 733 of 2006-07 in the Court of Circle Officer, Katihar for mutation of her name, where accused petitioner Nos. 1 to 4 also filed an application as intervener. The Circle Officer refused to mutate the name of his wife. Thereafter, his wife filed the Mutation Appeal No. 87 of 2006-07, which was allowed by D.C.L.R, Katihar on 11.07.2007. Thereafter, the Circle Officer mutated the name of his wife and the rent receipt was being issued in the name of his wife since 2008-09 and the name of the persons, who had purchased the land to accused-petitioner Nos. 1 to 5 were struck



down to the Jamabandi by the Circle Officer, Katihar. In spite of that the accused-petitioner Nos. 1 to 4 is still selling the land covering in Partition Suit No. 01 of 1979.

4. Learned counsel for the petitioners submits that it would appear from the Complaint petition that the dispute is of civil in nature. Further submission is that admittedly the Partition Suit No. 01 of 1979 is pending in the Court of Sub-Judge-III, Katihar in the aforesaid partition suit, the petitioners had filed the application under Order XXXIX, Rule I and II of C.P.C. against accused petitioner Nos. 1 to 4 seeking injunction against the petitioner No.1 to not transfer the land in dispute, but his prayer for injunction is refused.

5. On the other hand learned counsel appearing on behalf of Complainant-O.P. No.2 while submits that there is no illegality in the impugned order, but he submits that admittedly the Partition Suit No. 01 of 1979 regarding partition of the land in dispute is pending in the Court of Sub-Judge-III, Katihar in which an application under Order XXXIX Rule I of C.P.C. against the accused petitioner Nos. 1 to 4 to restrain them to not alienate the land in dispute was filed, but the same has been dismissed.

6. Admittedly, Abdul Kadir has executed the sale deed in respect to 10 Bigha land in favour of petitioner Nos. 1 to 4 covered in property of Partition Suit No. 01 of 1979 filed by the Complainant-O.P. No.2 against his wife Bibi Rauna Khatoon, Abdul Kadir and others, which is still pending for decision in the Court of Sub-Judge-III, Katihar in which petitioner Nos. 1 to 4 are



intervenor. Despute as disclosed in the complaint petition appears to be of civil in nature. As such, continuation of criminal proceeding on passing the impugned order summoning under Section 204 Cr.P.C. finding prima facie case under Section 465 of I.P.C. the accused petitioners will amount to abuse of the process of Court.

7. In the result, the impugned order dated 20.04.2011 passed in Complaint case No. 2681 of 2008, whereunder the Judicial Magistrate, 1st Class, Katihar summoned the accused petitioners, on enquiry, under Section 204 of Cr.P.C. finding prima facie case under Section 465 of the Indian Penal Code and entire criminal proceeding is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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