

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30157 of 2014

Arising Out of Complaint Case No. -489 Year- 2005 Thana -Shakurabad District- JEHANABAD

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Awadheshwar Sharma S/o Late Bhrigunandan Sharma, resident of village-
Pokhwan, P.S- Shakurabad, District- Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sri Upendra Sharma S/o Sri Chotan Sharma, resident of village – Pokhwan, P.S-
Shakurabad, District- Jehanabad.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar-I, Advocate
For the Opposite Party/s : Mr. H. Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-09-2017

1. Heard both sides and perused the record.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 29.11.2005 passed by the learned Judicial Magistrate 1st Class, Jehanabad in Complaint Case No. 489 of 2005 whereby and whereunder the learned Magistrate finding *prima facie* case for the offences under sections 420, 465, 467 and 468 of the Indian Penal Code, ordered for issuance of summons against the petitioner.

3. It has been alleged that this petitioner sold 6½ decimal land of the complainant to the co-accused, Ram Vinay Sharma by virtue of registered sale deed on 31.08.2005.



4. The learned counsel for the petitioner submits that there is bona fide land dispute between the parties. The petitioner being bona fide land owner, had rightly executed the sale deed in favour of the co-accused and so, no offence under sections 420, 465, 467 and 468 of the Indian Penal Code is made out. The other two accused were put on trial and in course of trial, neither the complainant nor any of his witnesses supported the allegation of cheating or committing any forgery in getting the sale deed executed. In course of evidence, the complainant had admitted that a Title Suit was filed in the court of learned Munsif, which was compromised. In cross-examination, he has stated that he does not want to prosecute the accused persons. The Trial Court, as per judgment dated 24.09.2010 passed in Trial No. 915 of 2010, acquitted the remaining three co-accused. The learned Magistrate without applying judicial mind, has passed the order in mechanical manner and so, the cognizance order is fit to be quashed.

5. The learned Additional Public Prosecutor opposed the submission.

6. On perusal of complaint petition and documents on record, I find that the petitioner claiming to be owner of the land, had executed a sale deed in favour of the co-accused, Ram Vinay Sharma. The said Ram Vinay Sharma has been acquitted by the Trial Court in



Trial No. 915 of 2010 as per judgment dated 24.09.2010. In this case, a copy of said judgment has been annexed as Annexure-2/1 to this application, which shows that the opposite party no. 2 has compromised the case. The complainant and his witnesses did not support the case and remaining three accused have been acquitted by the Trial Court.

7. In *Mohammed Ibrahim and another vs. State of Bihar and another* (2009) 8 SCC 751, the Hon'ble Supreme Court has observed in paragraph 23 as under:

“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.”

8. The present case is squarely covered by the principle decided by the Hon'ble Apex Court. In the complaint petition, I do not find any ingredient of cheating or committing forgery in getting the sale deed executed.



9. Having regard to the facts and circumstances of the case and taking into consideration the law laid down by the Supreme Court in the decision quoted above, the instant application deserves to be allowed. Accordingly, this criminal miscellaneous application is allowed and the order dated 29.11.2005 passed by learned Judicial Magistrate, Jehanabad in Complaint Case No. 489 of 2005 and criminal prosecution of the petitioner is hereby quashed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10.09.2017
Transmission Date	10.09.2017

