

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33016 of 2013

Arising Out of PS.Case No. -357 Year- 2012 Thana -COMPLAINT CASE District- JAMUI

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1. Asha Devi Wife Of Madan Prasad Burnwal @ Madan Prasad
2. Madan Prasad @ Madan Prasad Burnwal Son of Late Bhola Prasad Burnwal
3. Jitendra Kumar @ Pintu Son Of Madan Prasad Burnwal @ Madan Prasad
4. Santosh Kumar Son of Madan Prasad Burnwal, @ Madan Prasad
All Resident Of Purani Bazar, Jhajha, P.S.- Jhajha, District- Jamui

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ashok Burnwal @ Ashok Prasad Burnwal s/o Late Badri Burnwal r/o Purani
Bazar ward no. 2, Jhajha, P.s. – Jhajha, District - Jamui

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan Singh, Adv.
For the Opposite Party/s : Mr. Rana Randhir Singh, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date: 03-04-2017

Heard both sides.

2. The petitioners filed this petition under Section 482 of Cr.P.C for quashing the order dated 16.02.2013 passed in Complaint Case No. 357C/2012 by which the learned Judicial Magistrate Ist Class, Jamui found *prima facie* case under Section 420 and 34 of the Indian Penal Code to proceed against the petitioners.

3. The complainant/opposite party no. 2 filed complaint case making allegation that his mother is old and infirm. She is mentally fickle. Four days before the occurrence, Asha Devi petitioner no. 1 came to the house of the complainant and took his mother to Haridwar. Asha Devi is the sister of the complainant. The



complainant allowed his sister to take his mother, but the accused persons conspired with each other and took his mother to Chakai Registry Office and fraudulently got a sale deed executed.

4. On such complaint petition having been filed, the complainant was examined on solemn affirmation and the complainant also examined his witness. The learned Judicial Magistrate, Jamui after perusing the evidence of the complainant and his witnesses found *prima facie* case to proceed against the accused under Section 420 of the Indian Penal Code vide order dated 16.02.2013.

5. Learned counsel for the petitioner submits that the order is bad. On perusal of the entire complaint petition, no offence under Section 420 of the Indian Penal Code is made out. The complainant is the brother of Asha Devi petitioner no. 1. The complainant alleged that Asha Devi petitioner no. 1 took her mother from his house on the pretext of taking her to Haridwar, but she fraudulently caused her mother to execute the sale deed, but the complainant himself stated that the land stands in the name of his mother Manorama Devi. Manorama Devi is still alive and she has not been examined to show that any fraud was committed on her or she executed the sale deed out of her free will. She is the sole witness to testify if any fraud was committed.



6. On the other hand, learned counsel for the opposite party no. 2 as well as the learned A.P.P. submitted that learned Judicial Magistrate, Jamui on perusal of the evidence found *prima facie* case. The evidence of the complainant and his witnesses could not be appraised and appreciated in its pros and cons and therefore, this quashing petition is of no merit.

7. The question falls for consideration as to whether the order impugned suffers from any illegality and on the facts, as stated in the complaint petition the offences under Sections 420 and 34 of the Indian Penal Code is made out?

8. The complainant is the son of Manorama Devi and Asha Devi petitioner no. 1 is his own sister. Madan Prasad petitioner no. 2 is the husband of Asha Devi and Jitendra Kumar petitioner no. 3 and Santosh Kumar petitioner no. 4 are sons of petitioner no. 1 and petitioner no. 2.

9. From perusal of the contents of the complaint petition, it appears that the complainant has not made any allegation against petitioner no. 2 and petitioner no. 3. The complainant alleged that Asha Devi fraudulently caused her mother to execute sale deed by enticing her on the pretext of providing her old-age pension. Manorama Devi is the best witness to say that whether her daughter committed any fraud or she obtained her thumb impression or



signature by playing fraud upon her. The facts can be taken into consideration that now-a-days the executant of a sale deed has to appear before the Registrar and if he/she accepts execution of the sale deed only then the deed is registered. The signature and thumb impression are taken in presence of the Registrar after his/her acceptance of the execution of the sale deed. The Judicial Magistrate, Jamui asked for a report from the Deputy Superintendent of Police Jhajha, Jamui with reference to Jhajha P.S. Case No. 33/2012. From perusal of the aforesaid report, it appears that mother of the complainant stated that she voluntarily executed the sale deed in favour of her daughter and son-in-law as their pecuniary conditions are not good. This fact itself shows that no fraud is played and the petitioners did not play any fraud on Manorama Devi.

10. The allegation as alleged by the complainant rests on the evidence of Manorama Devi, the mother of the complainant, and in absence of her evidence, I am of the view that learned Judicial Magistrate has illegally without any material found *prima facie* to proceed against the accused under Sections 420 and 34 of the Indian Penal Code.

11. Considering the facts aforesaid, I find that the order dated 16.02.2013 passed in Complaint Case No. 357(C)/2012 is bad and illegal. Accordingly, the quashing petition is allowed. The order



dated 16.02.2013 passed in Complaint Case No. 357C/2012 is quashed.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05/05/2017
Transmission Date	05/05/2017

