

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4865 of 2012

Arising Out of Complaint Case No.-956 Year- 2007 Thana - Digha District- PATNA

- =====
1. Kalawati Devi D/o Late Harihar Singh and W/o Jalenra Singh, resident of Mainpura, P.S- Patliputra, District- Patna.
 2. Shiv Kumar Singh @ Shiv Kumar S/o Jalendra Singh, resident of Mainpura, P.S- Patliputra, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ambar Kumar S/o Late Nityanand Singh, resident of Ramjeechak, P.S- Digha, District- Patna.

.... Opposite Party/s

with

=====

Criminal Miscellaneous No. 6059 of 2012

Arising Out of Complaint Case No.-956 Year- 2007 Thana - Digha District- PATNA

- =====
1. Umesh Kumar Prabhakar S/o Late Satya Narayan Singh, R/o Ramjeechak, P.S.Digha, Distt-Patna.
 2. Binod Singh S/o Late Satya Narayan Singh, R/o Ramjeechak, P.S.Digha, Distt-Patna.
 3. Pramod Singh @ Pramod Kumar Singh S/o Ram Briksha Singh, R/o Ramjeechak, P.S.Digha, Distt-Patna.
 4. Vijay Singh @ Vijay Kumar Singh S/o Sri Lal Singh, R/o Ramjeechak, P.S.Digha, Distt-Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ambar Kumar S/o Late Nityanand Singh, R/o Ramjeechak, P.S.Digha, Distt-Patna.

.... Opposite Party/s

=====

Appearance :

(In Cr.Misc. No.4865 of 2012)

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Adv.
For the State : Mr. B.N. Pandey, APP
For the O.P. No. 2 : M/s Anjani Kumar Sinha and
Umesh Kr. Roy, Adv.

(In Cr.Misc. No.6059 of 2012)

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Adv.
For the State : Mr. Nityanand, APP
For the O.P. No. 2 : M/s Anjani Kumar Sinha and
Umesh Kr. Roy, Adv.

=====



CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 14-09-2017

1. These criminal miscellaneous applications under section 482 of the Code of Criminal Procedure, has been filed to quash the order dated 16th December 2011 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 956 of 2007 (Trial No. 827 of 2011) whereby and whereunder the learned Court below refused to discharge the petitioners from the offences under sections 420, 418 and 323 of the Indian Penal Code.

2. After hearing the parties and perusing the record, I find that the matter in both the cases is identical and so both the cases are being disposed of by this common judgment.

3. The complainant (opposite party no. 2) had filed the Complaint Case No. 956 of 2007 against the petitioners alleging *inter alia* that the petitioners of Criminal Miscellaneous No. 4865 of 2012 entered into an agreement to sell the land measuring 55 ½ decimal of plot no. 2287, Khata No. 1509 in favour of the petitioner no. 1 of Criminal Miscellaneous No. 6059 of 2012 and an agreement to sell the land, was executed by the petitioner-Kalawati Devi and others in favour of Umesh Kumar Prabhakar on 01.02.2007. The complainant has further alleged that the said plot no. 2287 having total area 1 acre 11 decimal belongs to him and it was his ancestral property, which



after family partition, came in the share of Baijnath Singh, who had gifted the same to the mother of O.P. no.2 through his attornee. The petitioners of Criminal Miscellaneous No. 4865 of 2012 had no right to enter into an agreement with respect to land, which was the exclusive property of the family of complainant. The petitioners have, thus, cheated the complainant and his family members.

4. The learned counsel for the petitioners submitted that the petitioner-Kalawati Devi is the sole surviving daughter of Harihar Singh. The said Harihar Singh had two more brothers, namely, Baijnath Singh and Shiv Nath Singh and land of plot no. 2287 was partitioned and divided in two shares. The petitioner no. 1- Kalawati Devi got half share to the land of 55½ decimal and remaining 55½ decimal went in share of Baijnath Singh, who was grandfather of O.P. No. 2. Both the parties are at litigating terms and a Partition Suit No. 575 of 1991 was filed by the petitioner- Kalawati Devi. One Umashankar Singh claimed the said land by virtue of a Will purported to be executed by Harihar Singh in his favour. He had also filed a L.A. Case No. 64 of 1994. The dispute between the parties is purely a civil dispute and from the allegation no offences under sections 420/120B of the Indian Penal Code against any of the petitioners is made out. The learned Magistrate without applying judicial mind, has passed the order and so, the impugned order is fit to



be quashed.

5. On the other hand, the learned counsel for the opposite party no. 2 as well as learned Additional Public Prosecutor opposed the submission.

6. On perusal of these applications and annexures enclosed therewith, I find that the land of plot no. 2287 having total area 1.11 decimal along with other plots were/are the ancestral land of three brothers, namely, Harihar Singh, Baijnath Singh and Shiv Nath Singh. The wife of Harihar Singh had filed a Partition Suit No. 575 of 1991 for partition of landed property, which was inherited by her husband and his two brothers. The petitioner-Kalawati Devi is sole surviving daughter of Harihar Singh whereas the opposite party no. 2 is grandson of another branch, namely, Baijnath Singh. The said Baijnath Singh died leaving behind his daughter, namely, Sumitra Devi. The father of the opposite party no. 2 had filed the present complaint case and after his death, his son has been substituted. The heirs of Baijnath Singh claimed the said land by virtue of registered deed of gift dated 17.08.1999. The heirs of Harihar Singh, who are petitioners of Criminal Miscellaneous No. 4865 of 2012 have executed an agreement in favour of the petitioner-Umesh Kumar Prabhakar. On going through the complaint petition, I find that there is absolutely no ingredient of committing fraud in getting the deed of



agreement executed. The petitioner- Kalawati Devi and Shiv Kumar Singh have admitted that they had executed the deed of agreement in favour of the petitioner-Umesh Kumar Prabhakar. The opposite party no. 2 is not the party to the said agreement and so, he is not competent to challenge the genuineness of agreement deed.

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 guidelines given by the Hon'ble Apex Court in above case. In the complaint petition, I do not find any ingredient of cheating or committing forgery in getting the agreement deed executed.



9. Having regard to the facts and circumstances of the case and taking into consideration the law laid down by the Hon'ble Supreme Court in the decision quoted above, the instant criminal miscellaneous applications deserve to be allowed.

10. Accordingly, both the applications are allowed and the order dated 16.12.2011 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 956 of 2007 (Trial No. 827 of 2011) as well as criminal prosecution of these petitioners is hereby quashed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.09.2017
Transmission Date	24.09.2017

