

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.26023 of 2012**

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

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Sharfa Zinat @ Ruhi, wife of Danishuddin, resident of Mohalla- Bibipur, P.S.-  
Kako, District-Jehanabad

.... .... Petitioner/s

Versus

1. The State of Bihar &
2. Arfa Nikhat alias Juhi, wife of Azaz Matin, resident of Mohalla- Kako, Saiyat  
Tola, P.S.-Kako, District-Jehanabad.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Dharmendra Kumar Sinha, Advocate

For the Opposite Party/s : Mr. Narsing Tanti, APP  
Md. Faiz Ahmad, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**Date: 08-08-2017**

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 04.08.2011 passed by the Judicial Magistrate, 1<sup>st</sup> class, Jehanabad, in Complaint Case No.966 of 2010 by which the learned Magistrate after holding enquiry has found *prima facie* case against the accused persons named in the Complaint Petition for the offence under Section(s) 417, 504, 406/34 Indian Penal Code.

2. It has been submitted on behalf of the petitioner that with regard to same land Title Suit was also filed by the complainant vide Title Suit No.189 of 2010, which was disposed off by judgment dated 01.11.2014 on the basis of compromise. It has further been submitted that from the nature of allegation the dispute is purely civil in



nature and continuance of the criminal proceeding is bad in law.

3. It is alleged in the Complaint Petition that the land as mentioned in the Complaint Petition was in possession of the complainant. It is mentioned in the Complaint Petition that Accused No.1 was brother-in-law (*Bahnoi*) of the complainant and Accused No.2 is the own sister of the complainant. The complainant talked to the accused persons in the year 2003 with regard to sale of her three decimal land and sold the same in the year 2003. In the year 2010, Accused No.2 (petitioner) came to the house of the complainant and said that she is negotiating for sale of the house in which complainant is residing and has called her husband from Arab for that purpose. The complainant became surprised and obtained certified copy of the sale deed through her lawyer and learnt that in the year 2003, by adopting unfair means, the accused persons got sale deed executed, with respect to the house of the complainant, whereas, the complainant wanted to sell her land. Thereafter, instant case has been filed.

4. It is admitted case that the complainant had filed Title Suit No.189 of 2010 for the same property. Supplementary Affidavit has been filed on behalf of the petitioner stating therein that the aforesaid Title Suit has already been disposed off vide judgment and decree dated 01.11.2014 on the basis of compromise between the parties.



5. Learned Magistrate has mentioned in the impugned order that on the basis of Solemn Affirmation of the complainant, statement of the witnesses recorded during enquiry, *prima facie* case is found out for the offence under Section(s) 417, 504, 506/34 Indian Penal Code.

6. This Court on perusal of the allegation made in the Complaint Petition as well as considering the fact that for the same disputed land, which is mentioned in the Complaint Petition, Title Suit was also filed by the complainant vide Title Suit No.189 of 2010, the nature of dispute alleged in the Complaint Petition is totally civil dispute.

7. It is admitted fact that the complainant has already adopted civil remedy by filing Title Suit No.189 of 2010. A Supplementary Affidavit has been filed on behalf of the petitioner stating therein that aforesaid Title Suit No.189 of 2010, has already been disposed off by judgment dated 01.11.2014, on the basis of compromise.

8. In the facts and circumstances of the case, this Court is of the view that continuance of the criminal proceeding against the petitioner is abuse of the process of Court and mere harassment to the petitioner.

9. Accordingly, the impugned order dated 04.08.2011



passed by the Judicial Magistrate, 1<sup>st</sup> class, Jehanabad, in Complaint Case No.966 of 2010 along with entire criminal proceeding against the petitioner is hereby quashed.

**10.** The application is, accordingly, allowed.

**(Sanjay Priya, J)**

*J.Alam/-*

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