

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36055 of 2014

Arising Out of P.S.Case No.30 Year- 2012 Thana -BIKRAM District- PATNA

- =====
1. Chandra Bhushan Sharma @ Vir Abhimanu
 2. Abhay Sharma Both S/o Late Arjun Singh Resident of Village Beni Bigha, P.S. Bikram, District Patna.

.... Petitioners

Versus

1. The State of Bihar
2. Kanchana Sharma D/o Late Jitendra Dubey Resident of Village Barsoi, P.S. Barsoi, District Katihar.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Sandeep Kumar, Advocate
For the Opposite Party No.2 : Mr. Md. Anisur Rahman, Advocat
For the State : Mr. Nawal Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 04-09-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 01.08.2014 passed by Judicial Magistrate, Danapur, Patna in Bikram P.S.Case No.30 of 2012 whereunder the learned Magistrate took cognizance of offence under Sections 420, 467, 468, 471 and 120(B) of the IPC ordered for issuance of summons against the petitioners.

2. Heard and perused the record.

3. The Opposite Party No.2 lodged an FIR with SHO of Bikram P.S. alleging therein that these petitioners in collusion with other co-accused committed fraud and forgery for taking possession over the land which was left by her husband. The accused persons has transferred portion of some of the land belonging to her which was



inherited by her father.

4. Learned counsel for the petitioner submits that the Opposite Party No.2 is stranger to the family of the petitioners. The land in question which is being claimed by Opposite Party No.2 is their ancestral land. The said land belonged to Shatrudhan Sharma who was uncle of the petitioners. The said Shatrudhan Sharma during his life time executed a deed of gift on 28.07.1993 in favour of the petitioners. The said Shatrudhan Sharma died unmarried. The petitioners came in possession over the entire land left by Shatrudhan Sharma and his unmarried brother Bharat Sharma. The petitioners being right full owner have executed some documents in favour of few persons. The Opposite Party No.2 was creating some problem in peaceful possession of the petitioners and so they filed Title Suit No.306 of 2013 in the Court of Sub-Judge, Paliganj (Patna) for declaration of their right and title on the basis of deed of gift. In the said title suit, the Opposite Party No.2 (informant of this case) appeared but she neither filed any document nor contested the case by adducing any evidence. The said suit was decreed in favour of the petitioners as per judgment passed on 31.01.2017. The allegation of cheating committing fraud and forgery in creating document is vague and no offence as alleged is made out. The learned Magistrate has passed the impugned order in mechanical manner without applying judicial mind and so the same is fit to be quashed.



5. Learned counsel for the Opposite Party No.2 as well as APP opposed the submissions.

6. On perusal of FIR and the documents available on record, I find that the allegation against the petitioner is not specific. In this regard, the petitioners had filed a title Suit No.306 of 2013 against the Opposite Party No.2 which was decreed in favour of the petitioners. Against the said judgment, the Opposite Party No.2 has not filed any appeal as it appears from the submissions of learned counsel for the petitioners. In the said suit, the deed of gift has been found valid and the genuine. In face of decision of civil court, the cognizance order with respect to said document does not appear to be legally sustainable. The allegation which has been leveled against the petitioners in the FIR has already adjudicated by a competent court.

7. In the facts and circumstances of the case, the impugned order dated 01.08.2014 passed in Bikram P.S.Case No.30 of 2012 by Judicial Magistrate, Danapur, Patna and the prosecution of the petitioners is hereby quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.09.2017
Transmission Date	13.09.2017

