

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35570 of 2014

Arising Out of PS. Case No.-2145 Year-2012 Thana- SAHARSA COMPLAINT CASE
District- Saharsa

1. Sk. Jalil Son of Late Sk. Sirajuddin
2. Sk. Idrish Son of Late Sk. Chhitan Both resident of village-
Rajanapura, P.S.- Maheshi, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar (Anr. Details Missing)
2. Anil KUMar Abhimanyu s/o Shri Chandra narayan yadav, r/o village Kahra,
Ward No. 06(Rifiyuzi Colony), P.S & District Saharsa. Permanent address
Village Tilathi, P.O. Rajanpur, P.s. Mahesi, District Saharsa.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Nafisuzzoha, Adv
For the O.P. No. 2	:	Mr. Shiv shankar Sharma, Adv
For the State	:	Mr. SHAKIR AHMAD (APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 01-11-2017

Heard learned counsel for the parties.

This petition under Section 482 of the Cr.P.C has been filed for quashing the order dated 05.08.2013 in Complaint Case No. 2145C of 2012, passed by the S.D.J.M., Saharsa taking cognizance of the offence against the petitioners under Sections 149, 193, 196, 420, 467, 468, 471 & 475 of the Indian



Penal Code.

Briefly stated, the facts of the case is that the complainant-opposite party no. 2 filed a complaint in the court of Chief Judicial Magistrate, Saharsa stating therein that in Mauza Rajanpur, Revenue Thana No. 127, New Khata No. 425, New Plot No. 4539 measuring 2 Katthas 10 Dhurs purchased through the Sale Deed No. 14084 dated 22.09.2003 and Sale Deed No. 7236 dated 11.06.2004 from Sk. Gaffar and Sk. Salim in the name of his wife Smt. Bibha Devi. It is further alleged that under Section 106 of the B.T Act, the petitioner filed a case against the wrong entries made as State of Bihar, against new Khata No. 1141 New Plot No. 4513 and 3286, and with the help of survey and settlement authorities made an interpolation in new Khata No. 425 New Plot No. 4539 in place of New Khata No. 1141 New Plot No. 4512 in record on 29.07.2005.

It has been submitted on behalf of the petitioners that they are innocent and from the reading of the complaint petition, no criminal offence is made out and at best disputes are of civil nature and related to entry made during survey proceeding as such no criminal offence is made out. It has been further contended on behalf of the petitioners that the complainant in his complaint itself had stated that the wife of



the complainant purchased the land from, Sk. Gaffar and Sk. Salim and not from these petitioners and as such no case is made out against them. As a matter of fact the land in dispute belongs to late Sk. Sirauddin who is the father of petitioner no. 1 and grandfather of petitioner no. 2 who purchased the land from khatiyani raiyat on 20.07.1912, and thereafter are continuing in possession over the said land. Wife of the complainant had purchased the land from the persons who had no right, title and possession of the land and allegation that the petitioners tampered official records with the assistance of the officials but the officials have not been made accused in this case.

The learned court of S.D.J.M. Saharsa after examination of complainant on S.A and two witnesses, took cognizance against the petitioners and issued summons against them to face the trial.

Jamabandi was running in the name of Sk. Chhitian s/o Sk. Sirajuddin and rent of the land was paid to the Government of Bihar by the petitioners and rent receipts were obtained till 1986. It has been further alleged that petitioners had filed a case under Section 106 of the B.T. Act being case No. 028873 of 1986 against the State of Bihar through C.O.



Maheśi against Khata No. 1141 New Plot NO. 4512 and 3286, but making interpolation in the Government records and in place of State of Bihar through Circle Officer, Maheśi get recorded their name and obtained ex parte order by the Presiding Officer on 29.07.2005.

From the reading of the contents of the complaint petition, no criminal offence is made out and dispute is of civil nature. There is presumption of correctness of entry made in the survey records unless and until it is set aside by the Civil Court. Complainant-Opposite Party no. 2 himself in his complaint had stated that the petitioners have obtained ex parte order from the Presiding Officer on 29.07.2005 and unless and until that order is set aside by the superior court or appellate court, it is binding on the parties. No ingredients in order to constitute offence of cheating or forgery is made out. Complainant is not purchaser from petitioners as such no case of misrepresentation or fraudulent inducement can be inferred. There is presumption under Section 114 of the Evidence Act that official work has been carried out in lawful manner. Authorities conducting survey operations under B.T. Act function as quasi judicial Authority. There is provision of appeal and revision against order passed by Survey Officer. Registered sale deed is a



voidable document and remains operative unless declared to be null and void by competent court.

In the given set of facts and circumstances of the case, no criminal offence is made out against the petitioners, but the dispute is of civil nature and the order passed by survey authorities under the B.T. Act is binding on all, unless and until the same is set aside by Civil Court of competent jurisdiction.

In the facts and circumstances of the present case, the order taking cognizance against the petitioners as well as the whole proceeding arising out of the Complaint Case No. 2145C of 2012, is quashed.

The petition is allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.11.17
Transmission Date	02.11.17

