

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41122 of 2014

Arising Out of PS.Case No. -1705 Year- 2013 Thana -SARAN COMPLAINT CASE District- SARAN

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Manju Rani Singh Wife of Late Vijay Singh, Resident of Village-
Prashurampur Darbar (West) P.S. Amnour, District- Saran at Chapra
.... Petitioner

Versus

1. The State of Bihar
2. Harendra Singh Son of Ramji Singh, Resident of Village-
Prashurampur P.S. Amnour, District- Saran at Chapra
.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. A.K. Singh 'Tarun', Advocate
Mr. J.P. Shaha, Advocate
For the O.P.No.2 : Mr. Amaresh Kumar Sinha, Advocate
Mr. Dayanand Singh, Advocate
For the State : Mr. Satyendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 10-10-2017

Heard learned counsel for the petitioner, learned
counsel for the Opposite Party No. 2 as well as learned
Additional Public Prosecutor for the State.

The petitioner, in the present case, is seeking
quashing of the order dated 20.08.2014 passed by learned
Chief Judicial Magistrate, Chapra, Siwan, in Complaint Case No.
1705/2013, Tr. No. 4738/2014 by which the learned
Magistrate has taken cognizance of the offences under Section
420 of the Indian Penal Code and issued summon against the



petitioner.

Learned counsel for the petitioner referring to the statement made in the complaint petition as contained in Annexure-3 to the present application submits that a bare perusal of the same would show that the present case is of a purely civil nature which has been given colour of a criminal proceeding.

Learned counsel for the petitioner submits that the allegation against the present petitioner is that she executed a sale deed (Annexure-2) dated 01.03.2013 in favour of one Sunita Devi by which she sold plot no. 880 under Khata No. 141 measuring area 10 Katha 18 dhoors (40.536 decimals) which the complainant claimed that the land belonged to her share. Learned counsel submits that the two un-controverted and un-denied documents enclosed with the present application i.e. a correction slip showing mutation in respect of tenancy (Annexure-1) and the rent receipt (Annexure-2) would show that the land bearing plot no. 880 under khata No. 141 measuring 10 Katha 18 dhoors is recorded in the name of Vijay Kumar Singh (husband of the present petitioner). So far as plot no. 879 is concerned, the petitioner has no concern and she



has not sold that land. The rent receipt which is a part of Annexure-1 (series) would also show that the present petitioner has been paying rent in respect of plot no. 880.

Learned counsel representing the Opposite Party No. 2 submits that this Court may not interfere with the order taking cognizance because a *prima facie* case has been made out against the present petitioner. He would submit that the petitioner has sold the land in question which belonged to the complainant-Opposite Party No. 2 and in respect of which the Opposite Party No. 2 has been paying the rent and has got land possession certificate.

This Court has perused the complaint petition and the materials such as correction slip showing mutation of certain land including plot no. 880 in the name of Vijay Kumar Singh (husband of the petitioner) and the rent receipt showing payment of rent by the two sons of this petitioner.

This Court is of the considered opinion that the sale deed (Annexure-2) dated 01.03.2013 is exactly for the same area of land of plot no. 880 in respect of which the mutation slip is showing entry in the name of husband of the petitioner, therefore, the allegations that the land in question has been



sold by the petitioner with her own description or stipulation in the sale deed is not even *prima facie* proved. This case is of the year 2014. The Opposite Party No. 2 was served long back but the two documents, i.e., Annexure-1, the correction slip of mutation of the land receipt in respect of plot no. 880 which the petitioner has not been denied or controverted, therefore, this Court is of the view that dispute is purely in the nature of civil dispute which may be decided in ongoing civil dispute but has been given colour of criminal proceeding. Therefore, Hon'ble adopts the ratio of judgment of the Hon'ble Supreme Court in the case of **Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.** since reported in **(2007) 12 SCC 1**. The Hon'ble Apex Court has taken note of the cases in which in respect of a pure and civil dispute the parties give it a colour of criminal proceeding. An extract from paragraph '23' & '24' of the said judgment is quoted hereunder for ready reference : -

"23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

(i) to give effect to an order under the Code;



(ii) to prevent abuse of the process of court, and
(iii) to otherwise secure the ends of justice.

24. *Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.”*

This court is satisfied that the order taking cognizance and issuance of summon as against the present petitioner has been passed by the learned Magistrate in a routine and mechanical manner. The order taking cognizance and issuance of summon, in so far as the present petitioner is concerned, is hereby quashed and the application is allowed to the extent indicated hereinabove. The observations made for purpose of this case shall not prejudice either parties in a civil dispute.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.10.2017
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