IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37640 of 2013

Arising Out of Complaint Case No.371 Year 2011 District- EAST CHAMPARAN (MOTIHARI)

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1. Neetu Kumari @ Nitu Devi, wife of Rajesh Kumar Gupta, resident of Mohalla Miscott, P.S. Motihari (Town), Distt. East Champaran.
2. Rajesh Kumar Gupta, Son of late Bihari Lala Gupta, resident of Mohalla - Miscott, Police Station Motihari (Town), District-East Champaran
3. Prabhat Kumar, Son of Bhikhario Prasad, resident of Mohalla Shawanipur Zirat, P.S. - Chhatauni, Dist.-East Champaran.
4. Ranjit Kumar Gupta, son of late Ganesh Sah, resident of village - Jiwdhara, Police Station - Pipra Kothi, Distt.-East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Uma Shankar Mishra, son of Kamod Mishra, resident of Mohalla - Bajaj Patii, Madhuwan Chauni Chowk, Ward No. 9, P.S. - Nagar Motihari, East Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bindhayachal Singh, Advocate.
For the Opposite Party/s : Mr. Mukesh Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 06-04-2017

1. Petitioners seek quashing of the order dated 14.9.2012 passed by the Sub Divisional Judicial Magistrate, Sadar Motihari, East Champaran, in connection with Trial No. 3654 of 2012 arising out of Complaint case No. 371 of 2011 by which cognizance has been taken against the petitioners for offences under Sections 420, 467, 468, 471 and 120(B) of the Indian Penal Code.

2. The complainant has alleged in the complaint petition that accused No. 1 Avinesh Kumar is resident of Muzaffarpur and is engaged in illegal trade as broker of land. He used to purchase the disputed land at lesser price and got possession over the land by use of force. The accused No. 3 Rajesh Gupta who is husband of accused No. 2 Nitu Devi, is financer of local land brokers. The accused No. 2 and 3 have amassed huge wealth by the aforesaid method whereas the accused No. 4, 5, and 6 namely, Ranjit Kumar, Prabhat Kumar and Ranjit Kumar Gupta are witness and identifier. It is further alleged that accused No. 1 Avinesh Kumar got Power of Attorney executed by accused Nos. 7 and 8 namely, Arun Kumar Mukherjee and Sujit Kumar Mukherjee on 7.2.2012 and on the basis of said Power of Attorney, accused No. 1 Avinesh Kumar Gupta sold land of Plot Nos. 2780, 2781, 2783 and 2784 measuring 5 Katthas and 5 Dhoors without any legal right and title over the aforesaid land. The accused No. 7 and 8 had got no Power of Attorney executed in view of the statement given by them earlier in Partition Suit No. 41 of 1953. Fraudulently, the accused No. 1 got Power of Attorney executed by accused Nos. 7 and 8.

3. Heard both sides.

4. It has been submitted on behalf of the petitioners that no criminal offence is made out in this case. Petitioner Nos. 1 and 2 have purchased the land from Power of Attorney Holder Avinesh Kumar after making payment of consideration money whereas the petitioner Nos. 3 and 4 are witnesses and identifier of the sale deed. It has further been submitted that a Title Suit No. 193 of 2012 has been filed by the complainant for cancellation of aforesaid sale deed and the same is pending in the court of learned Sub Judge-VI, Motihari.

5. Counsel for the petitioners has relied on a decision reported in ***2009 (4) PLJR S.C. page 99 (Md. Ibrahim & Ors. Vrs. State of Bihar & Anr)*** and has argued that no forgery or cheating has been committed by the petitioners on the basis of allegation in the complaint. There is no ingredient under Sections 420, 467, 468, 471 and 120 B of the Indian Penal Code.

6. Learned A.P.P. has submitted that there is allegation against the petitioners of committing forgery and cheating and it has been supported by the witnesses also.

7. From the impugned order it appears that the learned Magistrate has mentioned in the cognizance order that on the basis of allegation in the complaint petition and the statement of witnesses, prima facie case is made out against the accused persons under Section 420, 467, 468, 471, and 120B of the Indian Penal Code. The learned Magistrate in the impugned order has not given any justifiable reason to come to such finding and proceed against the petitioners for the aforesaid offences.

8. It is an admitted position that the complainant has already filed a Title Suit No. 193 of 2012 for cancellation of the sale deed executed in favour of the petitioner Nos. 1 and 2 which is pending before the learned Sub Judge-VI, Motihari.

9. The Hon'ble Supreme Court in a decision reported in ***2009(4) PLJR (S.C) page 99*** (***Md. Ibrahim & Ors. Vrs. State of Bihar & Anr.***) has held that "by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.

10. In the instant case even if the averments made in the complaint is assumed to be true, they do not make out any offence under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code against these petitioners who are purchaser of the property through Power of Attorney holder as well as witnesses and identifier of the sale deed. There is no any intention of these petitioners to commit fraud.

11. In fact, petitioner Nos. 1 and 2 are bona fide purchaser of property after making payment of consideration amount. The petitioner Nos. 3 and 4 are witnesses and identifier of the sale deed.

12. In such circumstances, this Court is of the view that continuance of criminal proceeding against the petitioners is abuse of the process of the law and harassment to these petitioners.

13. Accordingly, the order of cognizance with respect to these petitioners passed in Trial No. 3654 of 2012 arising out of Complaint Case No. 371 of 2011 along with entire Criminal Proceeding is hereby quashed.

14. Application stands allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	21.04.2017
Transmission Date	21.04.2017