

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41378 of 2014

Arising Out of PS.Case No. -1378 Year- 2012 Thana -SARAN COMPLAINT CASE District- SARAN

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1. Tribhuan Pathak S/o - Vidya Sagar Pathak R/o - Jamapur, P/o + P.S. - Jeeradei, Distt. - Siwan.
2. Santosh Pathak S/o - Vidya Sagar Pathak R/o - Jamapur, P/o + P.S. - Jeeradei, Distt. - Siwan.
3. Navin Pathak S/o - Vidya Sagar Pathak R/o - Jamapur, P/o + P.S. - Jeeradei, Distt. - Siwan.

.... Petitioners

Versus

1. The State of Bihar
2. Krishna Kumar Singh S/o - Late Ram Janam Singh R/o - Jamapur, P/o + P.S. - Jeeradei, Distt. - Siwan.

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Ajay Kumar Tiwary, Advocate.
For the State : Mr. Sanjay Kumar Singh, A.P.P.
For the Opp. Party no. 2 : Mr. Raghwendra Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date: 13-10-2017

Heard learned counsel for the parties.

2. The petitioners, in the present case, are seeking quashing of the order taking cognizance and issuance of process dated 04.02.2013 passed by learned Judicial Magistrate 1st Class, Chhapra at Saran in Complaint Case No. 1378(C)/2012 for the offence alleged under Section 420 of the Indian Penal Code.

3. Learned counsel for the petitioners submits that the present application is fit to be allowed on the solitary ground that from a reading of the complaint petition, without adding or subtracting anything out of it, no offence under Section 420 IPC is even *prima facie* made out. He submits that in fact a perusal of the



complaint petition would show that the entire story as made out by the complainant is in the nature of a civil dispute and there are certain presumptions and assumptions taken by the complainant for purpose of filing of the complaint case. Learned counsel submits that much before filing of the present complaint case, the opposite party no. 2 had filed a title suit bearing no. 360/2011 against the legal heirs of late Vidya Sagar Pathak. These three petitioners are sons of late Vidya Sagar Pathak and they have been impleaded as defendants no. 2, 3 and 4 respectively in the title suit which is on the same subject matter. Learned counsel, therefore, submits that the order taking cognizance has been passed by the learned Magistrate in a routine and mechanical manner.

4. On the other hand, learned counsel representing the opposite party no. 2 submits that the learned Magistrate has rightly taken cognizance and the statement made in the complaint petition discloses commission of an offence under Section 420 IPC, therefore, this Court may not like to interfere with the impugned order. Learned counsel, however, does not deny the fact that a title suit bearing no. 360/2011 has been filed by the opposite party no. 2 in the court of the learned Sub Judge 1st, Siwan against the legal heirs of late Vidya Sagar Pathak including the present petitioners. Learned counsel does not deny the contents of the plaint of the said title suit which has been



enclosed as Annexure-2 to the present application.

5. I have considered the materials available on the record and the submissions made at the Bar. The opposite party no. 2 has filed the present complaint alleging that his grand-father Sant Bax Singh had got executed two Bainama (Agreement) dated 12.05.1955 from Parmanand Pathak and Binda Pathak in respect of Khata No. 341, Survey No. 214, measuring an area 11 Kathha, 11 Dhur and Khata No. 342, Survey No. 215, measuring an area 12 Kathha, 7 Dhur. The complainant – opposite party no. 2 claims that his grand-father purchased the land and came in possession for the same, thereafter his grand-father was cultivating the land. The complainant-opposite party no. 2 claims that after death of his grand-father, he along with the other legal heirs came in possession of the land.

6. It is further case of the opposite party no. 2 that the accused persons requested him to make available the said land on lease for establishing a petrol pump; initially the opposite party no. 2 was not agreeable but, later on, agreed to execute a lease deed in favour of the accused persons. Thereafter, it is alleged that on request of the accused persons, the opposite party no. 2 gave them a photocopy of the Bainama for purpose of showing the same to the Oil Company in order to find out whether the company may grant permission for establishing the petrol pump on the said piece of land.



It is alleged that when no information could be received from the accused persons about further development in the matter of lease, the opposite party no. 2 contacted them and wanted to know whether they would be getting permission for opening the petrol pump, but at this stage the accused persons informed the opposite party no. 2 that the company is not granting them permission to establish the petrol pump on the said land. Here it is alleged that when the opposite party no. 2 demanded return of the photocopy of the Bainama (emphasis is mine) the accused persons informed that both the photocopies have been submitted in the office of the company, therefore, cannot be returned.

7. The opposite party no. 2 has further alleged that on 01.06.2011 the accused persons went to the house of the opposite party no. 2 and claimed that the grand-father of the complainant – opposite party no. 2 had executed the Bainama in favour of their father late Vidya Sagar Pathak which was not within their knowledge and, therefore, they were not willing to get a lease of the said land. The opposite party no. 2 alleged that when he asked the accused persons to show a copy of the Bainama, on 02.06.2011 the accused persons handed over a photocopy of the said Bainama. The claim of the opposite party no. 2 is that the photocopy which was handed over by the accused persons is bearing Deed No. 257 of the year 1956. The opposite party no. 2 thereafter said to have enquired from the Registry



Office about Deed No. 257 of the year 1956 but the said deed was missing from the Registry Office, therefore, he got copy of the Thumb Impression Register from which it was found that Deed No. 257 of the year 1956 has been executed by one Ramadhar in favour of Izrail Mian. The allegation is that the accused persons want to grab the land of this opposite party no. 2 by fraudulent acts. It is alleged that the accused persons have got removed the name of Sant Bax Singh in collusion with the Registry Office of Chhapra and got a fabricated Bainama said to have been executed by Sant Bax Singh. The opposite party no. 2 says that Sant Bax Singh had never executed any Bainama.

8. On perusal of the plaint of Title Suit No. 360/2011 (Annexure-2) it appears that the opposite party no. 2 has filed the suit in respect of the very same subject matter. The opposite party no. 2 has prayed for a declaration of title and confirmation of possession in his favour. There is also a prayer for declaration that the Bainama claimed by the accused persons is forged and fabricated, this declaratory suit was filed on or about 28.06.2011 where the parties are contesting the issues. A perusal of the two documents, i.e., the complaint petition and the plaint of the title suit clearly indicates that the parties are fighting a civil dispute, the complainant-opposite party no. 2 is claiming that the land in question was legally acquired by his grand-father and he was in possession throughout whereas the accused



persons – petitioners are trying to usurp the said land by virtue of the Bainama allegedly executed vide Deed No. 257 in the year 1956. The case of the complainant – opposite party no. 2 is that on the basis of this Bainama which, according to him, is forged, the accused persons want to usurp the land but in the complaint petition at least there is no material even *prima facie* showing that the accused persons have done any specific act or omission which may come within the purview of Section 420 IPC. Section 420 IPC reads as under:-

“420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

9. The complainant – opposite party no. 2 has challenged the photocopy of the alleged Bainama which allegedly bears Deed No. 257 of the year 1956, the same is the subject matter of challenge in the title suit. The opposite party no. 2 is himself seeking a declaration of title and confirmation of possession over the land. The civil suit is to be decided independently on the basis of the materials before the Court but so far as the present proceeding is concerned, the same cannot be allowed to continue on the basis of assumptions, presumptions and apprehension of the opposite party no. 2 which are



apparent in the complaint petition. To this Court, it appears to be a pure and simple civil dispute which has been given colour of a criminal proceeding.

10. The Hon'ble Supreme Court has times and again held that the tendency to convert a purely civil dispute in a criminal proceeding must be discouraged. In this connection reference may be made to the judgment of the Hon'ble Supreme Court in the case of ***Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.***, reported in (2007) 12 SCC 1. Paragraphs 23, 24, 25 and 26 of the said judgment are quoted hereunder for a 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.

25. Discussion of decided cases Reference to the following cases would reveal that the courts have



consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. DPP* [1964] AC 1254, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *DPP v. Humphrys* [1977] AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

26. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866, this court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

- (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.”

11. Having considered the entire materials and the submissions of the parties this Court is of the considered opinion that the learned Magistrate has not applied himself correctly in present case. Section 420 IPC is not attracted. On a total reading of the complaint, a mere statement of the opposite party no. 2 saying that a



photocopy of Bainama bearing deed no. 257 of the year 1956 was handed over to him by the accused which has been prepared fraudulently and on that basis accused want to usurp the land of the opposite party no. 2 would not constitute an act of cheating U/S 420 IPC. The learned Magistrate could not appreciate that much before filing of the complaint, the opposite party no. 2 has filed a title suit for a declaration of his title and confirmation of possession over the land in question, he is also seeking a declaration that Bainama held by accused persons is fraudulent, thus it is essentially a pure civil dispute and a civil dispute alone. There is no *prima facie* case of cheating, therefore, the order taking cognizance and issuance of summons against petitioners is bad-in-law and the same is liable to be set-aside. In the opinion of this Court, further continuance of the prosecution in the court below would only be an abuse of the process of the court.

12. The impugned order is thus set aside and the application is allowed. It is made clear that any observation made here-in-above for purpose of this case shall not prejudice the either parties in the civil dispute.

(Rajeev Ranjan Prasad, J)

Dilip, AR

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