

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42506 of 2013

Arising Out of PS.Case No. -1335 Year- 2012 Thana -MUZFFARPUR COMPLAINT CASE
District- MUZAFFARPUR

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Amar Nath Pandey son of Late Raghunath Pandey, resident of Mohalla- Motijheel,
P.S- Muzaffarpur Town, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Asharfi Rai son of Late Jogindra Rai, resident of village- Kishunpur Mohini, P.S-
Kudhani, District- Muzaffarpur.
3. Shambhu Rai son of Late Ram Briksh Rai of village Kishunpur Mohini, P.S.-
Kudhani, District- Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Advocate
	:	Mr. Uma Kant Prasad, Advocate
	:	Mr. Sanjeev Kumar Singh, Advocate
For the Opposite Party No.2	:	Mr. Sanjay Kumar @ S.K., Advocate
For the State	:	Mr. Navin Kumar Pandey, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 10-04-2017

Heard learned counsel for the petitioner and learned counsel
for opposite party no.2.

2. The present writ application under Section 482 of the
Code of Criminal Procedure (for short 'the CrPC') has been filed for
quashing the order dated 19.08.2013 passed by the learned Judicial
Magistrate, 1st Class, Muzaffarpur, in Complaint Case No.1335 of
2012, whereby finding a prima facie case to be made out for the
offences punishable under Sections 420, 467, 468, 471 and 120B of
the Indian Penal Code (for short 'the IPC'), the petitioner and five
others have been summoned to face trial.



3. The opposite party no.2 filed a complaint under Section 200 of the CrPC in the Court of Sub Divisional Judicial Magistrate, Muzaffarpur vide Complaint Case No.1335 of 2012 on 19.08.2013.

4. In sum and substance the case of the complainant is that he was in peaceful possession of the land bearing Khata No.121, Khesra Nos.4006, 4003, 4073, 4091 and 4098. In spite of having knowledge of this fact, the accused Shambhu Rai sold the land belonging to the complainant to the petitioner under a conspiracy through a registered sale deed. He alleged that the accused persons had come to the house of the complainant in the month of January, 2011 and had pressurized the members of the family to sell the concerned land but the same was refused.

5. It is alleged that he came to know about the execution of the sale deed in January, 2012, whereupon a Panchayti took place in which the accused persons assured him to get the sale deed cancelled. However, no action was taken thereafter.

6. Hence, the complaint in question was filed on 09.08.2012.

7. The complainant supported his allegation in his statement made on oath and besides him, three other witnesses, who were examined in course of enquiry conducted under Section 202 of the CrPC also supported the allegations made in the complaint pursuant to which the aforesaid summoning order dated 19.08.2013 was passed



by the learned Judicial Magistrate, 1st Class, Muzaffarpur, which is under challenge in the present application.

8. It is submitted by the learned counsel for the petitioner that even on admitted facts of the case none of the ingredients of the offences alleged would be attracted against the petitioner, a bonafide purchaser of the land, in the present case. He submitted that the learned Magistrate failed to take notice of the fact that the complainant admitted that it was accused Shambhu Rai, who had executed the sale deed in favour of the petitioner and, thus, in any view of the matter, if a person having no title did transfer the right in favour of the petitioner, it was the petitioner who had been cheated and not the complainant. In support of his submission, learned counsel for the petitioner has placed reliance on a decision of the Hon'ble Supreme Court in *Mohammed Ibrahim and Others vs. State of Bihar and Another* [(2009) 8 SCC 751].

9. He submitted that the accused Shambhu Rai, who had executed the sale deed by representing that he has good title over the land in question is none else, but the cousin of the complainant. He obtained consideration amount of Rs.5,65,000/- from the petitioner and the moment the petitioner came to know that he had been duped by the said Shambhu Rai, he filed a complaint on 16th July, 2012, which was immediately sent to the police by the learned Magistrate in exercise of powers conferred under section 156(3) of the CrPC



pursuant to which Muzaffarpur Town P.S. Case No.422 of 2012 dated 11.08.2012 has been instituted against Shambhu Rai for the offences punishable under Sections 406, 420, 466, 467 and 468 of the IPC.

10. He submitted that the instant complaint petition has been filed in retaliation to the complaint filed by the petitioner on 16.07.2012. It is also contended that the dispute, if any, is of civil nature and since the matter relates to ownership of the land and subsequent execution of the sale deed by a person, who claims himself to be the owner of the property in question, the learned Magistrate ought to have dismissed the complaint in exercise of power conferred under Section 203 of the CrPC instead of summoning the accused persons to face trial.

11. *Per contra*, learned counsel for the complainant opposite party no.2 submitted that the accused persons conspired together and in furtherance of their conspiracy the land belonging to the complainant was transferred by the accused Shambhu Rai in favour of the petitioner by execution of the sale deed. He submitted that the subsequent institution of FIR by the petitioner against accused Shambhu Rai would not mitigate the offence already committed earlier, as the said FIR has been instituted just in order to create defence by the petitioner in order to save himself from prosecution in the present complaint. He submitted that the petitioner being the beneficiary of the alleged fraud cannot take a plea of innocence, as he



was fully aware of the fact that the owner of the property is the complainant and not the accused Shambhu Rai, who had transferred the land in his favour by executing a sale deed.

12. I have heard learned counsel for the parties and perused the record.

13. In an exactly identical situation in *Mohammed Ibrahim and Others* (supra) the Hon'ble Supreme Court after examining the provisions of Sections 467, 470, 471 and 420 etc. held as under:

“20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the



complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.” (emphasis added)

14. It has further been held in the aforesaid judgment that on execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. It further held that even if averments made in the complaint is assumed to be true, the same do not make out any offence under Sections 420, 467, 471 etc.

15. Here in the present case also the petitioner is a



purchaser, who is alleged to have purchased the property from one Shambhu Rai, cousin of the complainant, who claimed himself to be the owner of the land. In that view of the matter, if any one has been cheated, it is the petitioner and not the complainant of the case.

16. The ratio laid down by the Hon’ble Supreme Court in case of *Mohammed Ibrahim and Others* (supra) squarely covers the case of the petitioner. The ingredients of the offences alleged are clearly not attracted against the petitioner. Thus, in the opinion of the Court, allowing the prosecution to continue against the petitioner would be an abuse of process of the Court.

17. Accordingly, the impugned order dated 19.08.2013 passed by the Judicial Magistrate, 1st Class, Muzaffarpur in connection with Complaint Case No.1335 of 2012, so far as the petitioner is concerned, is hereby quashed.

18. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	15.04.2017
Transmission Date	

