IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48015 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Ajay Upadhyay, son of Sri R.P. Upadhyay R/O Village- Pakrihar, P.S. Jogapatti, Dist. West Champaran At Present Residing At 12, Nandanpuri Colony, Khajpura, P.S. Rajivnagar, Distt. Patna .... Petitioner

Versus

1. The State Of Bihar
2. Sri Rajendra Pandey, son of Late Satya Narain Pandey, Resident of Village Tiwari Chak, P.S. Naubatpur, Distt. Patna, Presently Residing At Road No. 6, Police Colony, Anisabad, P.S. Gardanibagh, Distt. Patna .... Opposite Parties

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Appearance :

For the Petitioner : M/S Manoj Kumar Singh & Brajesh Kumar Pandey, Advs.
For the State : Mr. Mr. Shyam Kumar Singh, APP 138
For O.P. No. 2 : M/S Gajendra Kumar Jha & Sushil Kumar jha, Advs.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date: 16-01-2017

Heard the learned counsel for the petitioner, the complainant and the State.

2. This application is for quashing of order, dated 07.03.2013, passed in Complaint Case No. 3359(C) of 2012 whereby the learned Judicial Magistrate, 1st Class, Patna, has ordered issuance of process in exercise of power under Section 204 of the Criminal Procedure Code against the petitioner and others to face trial for offence under Sections 420, 467, 468, 471/34 of the Penal Code.

3. A brief background of the complainant case is that one Bhuneshwar Tiwari died in the year 1964 leaving behind his two wives, Amrawati Devi and Sheo Kumari Devi. Sheo Kumari Devi had two daughters, Kanti Devi and Kamlesh Devi. Kanti Devi is mother of the petitioner and Kamlesh Devi is wife of the complainant. Kanti Devi filed Title Suit No. 91 of 1991 in the Court of learned Sub Judge, Danapur, against Kamlesh Devi and others for partition of her share in the father's property. The complainant has already been substituted in the civil suit. A written statement was also filed in the year 1999 in the suit.

4. Sheo Kumari Devi, the mother, executed a registered deed of gift in the year 1986 in favour of Kamlesh Devi, one of her daughters, in respect of the referred properties claiming that the property was inherited by her from her husband. In the civil suit the genuineness of the aforesaid deed of gift is under challenge at the hands of Kanti Devi

and after her death by the petitioner and others.

5. Allegation in the complaint petition is that the petitioner had executed forged and fabricated sale deed with regard to the land of the complainant which was acquired by his wife, Kamlesh Devi, through the gift deed of the year 1985 aforesaid. Further, allegation is that the petitioner executed power of attorney to co-accused, Saket, and in turn Saket has also executed a power of attorney in favour of Ranjit Choubey and Ranjit Choubey executed a sale deed on the basis of that power of attorney in respect of some land of the complainant. Thus, there is allegation of creation of forged document to put wrongful claim of the land of the complainant and just to cheat the complainant.

6. Submission of the petitioner is that the contents of the allegation would reveal that the case is purely of civil nature and to settle the civil dispute the complaint petition has been filed to put undue pressure on the petitioner which cannot be allowed. His next contention is that the ingredients of none of the offences are prima facie made out. As a matter of fact the mother of the petitioner also inherited the property of her father soon after his death as she was also one of the class one heir along with her mother, Sheo Kumari Devi and sister, Kamlesh Devi. Hence, Sheo Kumari Devi had no right to execute deed of gift in respect of entire property inherited from the father in favour of one of the daughters. She might have transferred her 1/3rd share. Therefore, the matter is purely of civil dispute since the petitioner has bonafide claim of succession through his mother, Kanti Devi. Therefore, it can not be alleged that any act of transfer of property by the petitioner with bonafide intention to have his title would amount to cheating to some other person whereas the complainant's side also sold some of the properties inherited from Bhuneshwar Tiwari. His next contention is that offence of creation of forged document is also not made out in the facts and circumstances of this case, it is not alleged that the petitioner has impersonated in creation of any document. If impersonation is not there it can not be said that there is forgery in the document said to be executed by the petitioner. More over, the entire matter is to be looked into in the civil proceeding, already pending as stated above.

7. On the other hand, the learned counsel for the complainant-

opposite party no. 2 submits that civil dispute is no bar for criminal prosecution if the ingredients of criminal offences are also made out on the same facts for which civil dispute is going on. His next contention is that if every one is allowed to create a document in respect of property others it would certainly create uncertainty as well as threat to the title of the real owner. Therefore, such act should appropriately be punished.

8. The background of the allegation would reveal that the complainant has not come up with clean hands. The complaint petition does not disclose the relationship between the parties and pendency of the civil suit for the same property, which is claimed by both sides through succession as legal heirs of late Bhuneshwar Tiwari. Everything, as alleged in the complaint petition, is already to be adjudicated in the civil suit already pending before the competent Civil Court. Since, the matter is purely of civil dispute the continuance of the present criminal proceeding amount to an abuse of the process of the Court. The aforesaid view finds support from the following cases :

9. In the cases of **Indera Mohan Goswamy & Anr. Vrs. State of Uttranchal & Ors. reported in AIR 2008 SC, 251**, and **Thermax Ltd. & Ors. Vrs. K.M. Johny & Ors., reported in (2011) 13 SCC, 412**, the Apex Court has held that the criminal prosecution ought not to be used as an instrument of harassment or seeking private vendetta with an ulterior motive. A civil matter can not be settled by agitating the forum of criminal law.

10. In **G. Sagar Suri & Anr. Vrs. State of UP & Ors., reported in (2000) 2 SCC, 633** the Hon’ble Apex Court held in paragraph 8 as follows :

> “8 : Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

11. The second point for consideration is whether the offence under Sections 420, 467, 468 and 471/34 of the Indian Penal Code is prima facie made out, even on bare perusal of complaint petition and evidences, brought during the inquiry under Section 202 of the Criminal Procedure Code.

12. Section 467 of the Indian Penal Code provides punishment for forgery in document or valuable security, Section 468 of the Indian Penal Code provides punishment for forgery for the purpose of cheating and Section 471 of the Indian Penal Code provides punishment for use as genuine a forged document or electronic record. Therefore, first of all definition of word "forgery" requires to be looked into. Section 463 of the Indian Penal Code reads as follows :

> "463 – [Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damaged or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

13. The perusal of aforesaid provision apparently shows that for forgery there must be evidences of making of any false document or false electronic record or part thereof. In the present case, there is no allegation of making of false electronic record.

14. Section 464 of the Indian Penal Code, which defines making a false document reads as follows :

> "464 : Making a false document – [A person is said to make a false document or false electronic record –
> (a) makes, signs, seals or executes a document or part of a document;
> (b) makes or transmits any electronic record or part of any electronic record;
> (c) affixes any [electronic signature] on any electronic record;
> (d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],

> with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or
> Secondly – Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an

> electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] wither by himself or by any other person, whether such person be living or dead at the time of such alteration; or
> Thirdly – Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

15. In **Md. Ibrahim & Ors. Vrs. State of Bihar & Anr., reported in 2009(4) PLJR (SC) 99**, the Apex Court examined the aforesaid provisions and held that the condition precedent for an offence under Sections 467 and 471 of the Indian Penal Code is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof).

16. Now the question is whether the petitioner by executing sale deed or by executing power of attorney in respect of the land of the complainant executed a false document. The answer would be in negative in view of the fact that petitioner had not pretended or posed that he is executing the document under the authority of the person who had actually not given any authority.

17. The Apex Court in paragraph 13 of the judgment of **Md. Ibrahim** case examined the scope and applicability of the offence under Section 420 of the Indian Penal Code, which reads as follows :

> "13 : Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows : (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind reputation or property. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived; (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable

of being converted into a valuable security)."

18. A bare perusal of the ingredients of Section 420 of the Indian Penal Code would reveal that even if it is assumed that petitioner has cheated any one that one is the purchaser for consideration and not the complainant. There is no allegation of dishonest inducement or deceive to the complainant by the petitioner.

19. Hence, I am of the view that none of the offences for which cognizance has been taken is prima facie made out on bare perusal of the allegation.

20. In the result, the impugned order is not sustainable in law, hence, same is **quashed** and this application stands **allowed**.

(Birendra Kumar, J)

SA/-

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CAV DATE	
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