

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50539 of 2013

Arising Out of PS.Case No. -1409 Year- 2008 Thana -BUXAR COMPLAINT CASE District-
BUXAR

- =====
1. Prabhakar Prasad Son Of Kedar Nath Prasad Resident Of Village- Gardh Nokha, P.S.- Gardh Nokha, District- Rohtas
 2. Kedar Nath Prasad Son Of Late Bipin Bihari Prasad Resident Of Village- Gardh Nokha, P.S.- Gardh Nokha, District- Rohtas

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sri Hirday Nath Prasad Son Of Late Bipin Bihari Prasad R/O Mohalla- Sitaram Nagar, Bazar Samittee, Road Buxar P.S.- Buxar Nagar, District- Buxar

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Sanjay Kumar Tiwary, APP.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 16-05-2017

Heard both sides.

The petitioners filed this petition under Section 482 of the Code of Criminal Procedure to quash the order dated 22.04.2009 by which the learned Judicial Magistrate found prima facie case under Sections 406 and 420 of the Indian Penal Code to proceed against the petitioners.

Learned counsel for the petitioners submits that the complainant is the own brother of petitioner no.2 and petitioner no.1 is the son of the petitioner no.2. The complainant alleged that the



petitioners forged the signature of the complainant and created a deed of partition. Even one of the brothers of the complainant is not made party to the partition deed. On such assertion, the complainant filed the complaint petition and examined his witnesses.

The learned counsel for the petitioners assails the order on the ground that the order impugned is mechanical and perfunctory. Learned Judicial Magistrate vide order dated 22.04.2009, wrote in the margin of the order sheet that offence under Sections 406 and 420 of the Indian Penal Code is made out, but from perusal of the order dated 22.04.2009, the order does not contain that what sections of the Indian Penal Code prima facie case is found to proceed against the petitioners. It appears that the learned Judicial Magistrate has passed the order without applying mind and passed the order in a perfunctory and slipshod manner. On the face of the complaint petition, it appears that there is no breach of trust, therefore, no offence under Section 406 of the Indian Penal Code is made out.

On the other hand, learned counsel for the Opposite Party No.2 tried his best to convince the Court that in the margin of the order sheet, the learned Judicial Magistrate has found prima facie case under Sections 406 and 420 of the Indian Penal Code.

On perusal of the order itself, it appears that the learned



Judicial Magistrate has not incorporated in his order under what sections of the Indian Penal Code, prima facie case is found. The order on the face depicts the sorry affairs of state that the order has been passed in a mechanical, perfunctory and slipshod manner. Accordingly, the order is set aside and the matter remitted to the court below to pass order afresh in accordance with law. Accordingly, the quashing petition is allowed.

(Prabhat Kumar Jha, J)

Mishra/-

AFR/NAFR	N.A.F.R.
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