

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24888 of 2014

Arising Out of PS.Case No. -689 Year- 2010 Thana -WEST CHAMPARAN COMPLAINT District-
WESTCHAMPARAN(BETTIAH)

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1. Jaynarain Tiwari Son of Late Kanti Tiwari
2. Ram Prakash Tiwari @ Prem Prakash Tiwari Son of Shri Jaynarain Tiwari Both
are residents of village - Tesarahiya Tola Manpur Makari, Police Station-
Bathuwariya, District - West Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Krishna Kant Tiwari @ Ajay Tiwari Son of late Rajkeshwar Tiwari, resident of
village - Tesarahiya Tola Manpur Makari, Police Station - Bathuwariya, District -
West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bashishtha Narayan Mishra
Mr. B.K. Mishra
For the State : Mr. H.A. Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 28-06-2017

1. The petitioners seek quashing of the order dated 15.07.2013
passed by the learned Judicial Magistrate, 1st Class, Bagaha, District-
West Champaran in Complaint Case No. C-689 of 2010 whereunder
cognizance for the offence under Sections 420, 468, 323, 504 of the
Indian Penal Code has been taken against them.

2. Heard both sides.

3. The facts, in brief, is that the O.P. No. 2 filed a Complaint Case
No. 689 of 2010 against the petitioners and four others alleging *inter
alia* that these petitioners fraudulently executed two registered sale
deeds in favour of the accused nos. 3 and 4 with respect to his land.



The other co-accuseds are identifier and witnesses to the deeds. The complainant (O.P. No. 2) when inquired about the fraudulent act of the accused persons, they abused and assaulted him. In course of enquiry, the witnesses supported the allegation and the court below, accordingly, took cognizance for the offence as stated above and ordered for issuance of summons against them.

4. The learned counsel for the petitioners submits that the petitioner no. 1 is an agnate of complainant and prior to institution of the present complaint case, he had filed a Partition Suit No. 244 of 2009 which is still pending in the court of learned Civil Judge, Senior Division (Sub-Judge), Bettiah, District-West Champaran. The petitioner no. 1 being co-sharer having right title and possession had executed two sale deeds in favour of two accuseds. There is no allegation of any fraud and forgery in getting the sale deed executed. The petitioner no. 2 had identified the petitioner no. 1 at the time of execution of sale deed. The other-co-accuseds are witnesses to the said two documents. The petitioner no. 1 being in need of money to meet the legal necessity had executed the sale deed and so no offence under Sections 420, 406, 467 and 468 of the I.P.C. is made out. The allegation of assault and abusing the complainant has been cooked up only to harass the petitioners. The dispute between the parties is purely a civil dispute and so the prosecution of the petitioners is abuse



of process of Court and is fit to be quashed.

5. The learned APP, on the other hand, opposed the submissions. It was submitted that the allegation made in the complaint clearly attracts the offences punishable under Sections 420, 468, 323 and 504 of the I.P.C. and so the order taking cognizance does not suffer from any illegality.

6. Perused the impugned order and documents on record to ascertain the allegations made against the petitioner no. 1. The petitioner no. 1 is agnate of complainant. The petitioner no. 1 has filed a Partition Suit No. 244 of 2009 against the co-sharer including the complainant. He has sought relief for partition of landed property claiming share to the extent of one third. The allegation against petitioner no. 1 is that he transferred two kathas nine dhurs of plot no. 884 in favour of the accused no. 2 by virtue of registered sale deed dated 06.07.2010 and further three kathas seven dhurs land in favour of accused no. 4 by virtue of registered sale deed dated 09.06.2010. These plots are also subject matter of partition suit. The title of the petitioner no. 1 on account of being agnate is not in dispute. He executed both the sales deeds in favour of co-accuseds. The complainant was not party to any of the documents. There is no allegation of any entrustment so as to attract any penal provision. I further find that there is also no element of cheating on the part of



these petitioners. The allegations of assault and abusing the complainant according to learned counsel for the petitioners are addition only to make out a case for prosecuting the petitioners. The petitioner no. 2 and other accuseds are identifier witnesses or the purchaser. Their prosecution to my mind appears to be abuse of process of Court as the dispute between the parties is purely a civil dispute for which a Civil Suit is pending.

7. In view of the aforesaid discussions, I find force in the submissions of the learned counsel for the petitioners. The order dated 15.07.2013 passed by the Judicial Magistrate, 1st Class, Bagha, District-West Champaran is hereby quashed.

8. This Cr. Misc. application is, accordingly, allowed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01.07.2017
Transmission Date	01.07.2017

