

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32666 of 2014

Arising Out of PS. Case No.-88 Year-2014 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

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Nayyar Iqbal @ Md. Nayyer Iqbal Son of Late M.A. Wahood Resident of
Village - Khanquah, P.O.- Biharsharif, P.S.- Laheri, District – Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Parmanand Prasad Son of Late Satyanarayan Lal Resident of Mohalla -
Laknathpur Ganj, Ward No. 12 in front of School, P.S.- Dalsingsarai, District
– Samastipur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ram Binod Singh, Adv
For the Opposite Party/s : Mr. S.DAYAL (APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 16-08-2017

Heard learned counsel for the parties.

The present quashing application under Section 482 of the Cr.P.C has been filed for quashing the order dated 10.03.2014, passed by the learned Additional Chief Judicial Magistrate, Dalsingshsarai in Complaint Case No. 88 of 2014, by which the court below has taken cognizance against the petitioner under Sections 198, 219, 420, 467, 468, 471, 472, 384, 386 & 120B of the Indian Penal Code.

Briefly stated, the fact of the case is that the complainant purchased a piece of land from Ramchandra



Purbey on 19.12.1992, through a registered sale deed in the name of his wife Shail Devi. The land was mutated in the name of his wife.

It has been further stated that one Bhuvneshwar Paswan started claiming title over the land in the year 1994. The wife of complainant filed Title Suit No. 31 of 1994, for declaration of her title and confirmation of possession, which is still pending. Bhuvneshwar Paswan claimed title over the land by a gift deed executed in his favour by Ram Chandra Purbey.

The complainant obtained certified copy of gift deed executed by Bhuvneshwar Paswan which disclosed that the signature over the gift deed has been obtained by forgery.

It has been further alleged that on 02.02.2014, Bhuvneshwar Paswan and his sons came at the residence of complainant and showed the original gift deed and threatened the complainant to vacate the land or they would implicate the entire family of the complainant in Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Lastly, it has been contended that on the basis of said gift deed Bhuvneshwar Paswan got the land mutated in his favour in Mutation Case No. 814 of 2006-07. The complainant was examined before the court on solemn affirmation and in support



of his case, witnesses were also examined on behalf of the complainant and some documents were also annexed and on the basis of solemn affirmation of complainant and examination of witnesses on his behalf and documents enclosed in support of complaint case, the court below found sufficient materials available on the case record to proceed against the accused under Sections 198, 219, 420, 467, 468, 471, 472, 384, 386 & 120B of the Indian Penal Code, and issued summons for their appearance including the petitioner to face the trial.

The petitioner who is a Government official and at the relevant point of time was posted as Circle Officer and had ordered mutation in favour of said Bhuvenshwar Paswan, was also made accused by the complainant and the court below has taken cognizance against him along with other accused named in the complaint petition. The mutation was made on the basis of the report of revenue Karamchari and Circle Inspector. It has been contended by the learned counsel for the petitioner that the mutation order was passed by the Circle Officer, who is the competent authority under the Bihar Tenants' Holdings (Maintenance of Records), Act, 1973, (hereinafter referred to as the 'Act') discharges the function of quasi judicial authority while deciding the mutation matters. There is provision of



appeal and revision against the order passed by the Circle Officer in the Act. Section 25 and 26 of the Act reads as follows:-

“25. Authorities under this Act to have power of Civil Court- While making enquiries and conducting proceeding under this Act, the Collector, the Land Reforms Deputy Collector, the Anchal Adhikari shall have the same powers in matter of admission of evidence, summoning and enforcing the attendance of any person and examining him on oaths, compelling the production of documents and award of costs, as are vested in a court under the Code of Civil Procedure, 1908.

26. Inquiries and proceedings to be judicial proceedings- All inquiries and proceeding under this Act before Collector and Land Reforms Deputy Collector, the Anchal Adhikari shall be deemed to be Judicial Proceedings for the purpose of sections 193, 196 and 228 of the Indian Penal Code, 1860.”

Lastly it has been submitted that the petitioner being a gazetted officer under the employment of the State is protected under Section 197 of the Code of Criminal Procedure. The mutation order was passed by the petitioner in discharge of his official duty, as such the order of cognizance without



sanction of State is bad in law.

After hearing the rival contentions of the parties, this Court finds that the order of cognizance taken against the petitioner is not sustainable in the eye of law, as such the order taking cognizance as well as the whole proceeding arising out of Complaint Case No. 88 of 2014, so far it relates to the petitioner is quashed.

The petition stands allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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