

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19383 of 2014

Arising Out of PS.Case No. -217 Year- 2013 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

- =====
1. Durga Devi W/o Late Madhu Kant Jha
 2. Vinod Kumar Jha Son of Late Madhu Kant Jha
 3. Birendra Kumar Jha Son of Late Madhu Kant Jha

All the petitioners 1 to 3 are Permanent resident of village- Bajitpur, P.S.- Desri,
District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar
2. Ram Pravesh Thakur S/o Satyadeo Thakur residing at Bajitpur, P.S.- Desri,
District- Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajni Kant Jha

For the Opposite Party/s : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 23-08-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 11.11.2013 passed by the learned Judicial Magistrate, 1st Class-cum-Additional Munsif, Hajipur in Complaint Case No. 217 of 2013 whereunder the learned Magistrate finding prima facie case for the offence under Section 420 of the Indian Penal Code ordered for issuance of summons against the petitioners.

2. Heard both sides.

3. The facts in brief is that the Opposite Party No. 2 filed a Complaint Case No. 217 of 2013 on the file of C.J.M., Hajipur, Vaishali alleging inter alia that the Opposite Party No. 2 fraudulently



obtained an order for correction in record of right. The Deputy Director of Consolidation, Vaishali Hajipur as per order dated 03.02.1998 passed in Case No. 662 of 1998 ordered for correction of the names in the record of right of plot Nos. 2090, 2093 and 2094.

4. The learned counsel for the petitioners submits that the petitioners filed Case No. 662 of 1998 for getting their names recorded over the land of R.S.P Nos. 2090, 2093 and 2094. They claimed the said land as their ancestral land. The learned D.D.C., Vaishali after hearing allowed the case and ordered for recording the names of these petitioners. Thereafter, the petitioners filed mutation case before Circle Officer and on the basis of order of D.D.C, Vaishali, their names were mutated. The Opposite Party No. 2 filed an appeal before the Deputy Collector, Land Reform, where the matter was remanded to the Circle Officer. Even after remand order, the mutation remained in favour of the petitioners. The allegation of cheating appears vague and not specific. The order which is being challenged by the Opposite Party No. 2 is an order of a competent authority and so, no cognizance should have been taken against the petitioners for the order which was passed by a competent authority. The order taking cognizance is against the material on record and so, the same is fit to be quashed. The learned counsel further submits that the learned Magistrate has not applied judicial mind and passed



the impugned order in mechanical manner and so, the same is to be quashed.

5. The learned APP for the State opposed the submission.

6. On perusal of cognizance order and annexures on record, I find that the Opposite Party No. 2 has challenged the order of Deputy Director of Consolidation passed in a case, which was filed by the petitioners for correction of their names over the land in question. The said order has not been challenged before the competent authority by filing any appeal. The petitioners had no role at all in getting the said order passed. I do not find any ingredient of cheating in the said order. In such circumstances, criminal prosecution of these petitioners would amount to abuse of process of Court.

7. In view of above facts, the impugned order dated 11.11.2013 passed by the learned Judicial Magistrate, 1st Class-cum-Additional Munsif, Hajipur as well as the criminal prosecution of these petitioners on the basis of impugned order is hereby quashed and this application is allowed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.08.2017
Transmission Date	24.08.2017

