

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49222 of 2013

Arising Out of P.S.Case No. -978 Year- 2011 Thana -KHAGARIA COMPALINT CASE District-
KHAGARIA

- =====
1. Pradeep Kumar Dahlan @ Pradeep Kumar Son Of Sri Hari Kishunji Dahlan Resident Of Village- Sagarmal Chowk, Khagaria, P.O.+P.S.+District- Khagaria
 2. Umesh Pathak Son Of Sri Guna Nand Pathak Resident Of Village- Murgia Chowk, Khagaria, P.O.+P.S.+District- Khagaria
 3. Shankar Lal Shararwgi Son Of Late Ghansi Ram R/O Mohalla- Mill Road Khagaria, P.O. + P.S. + District- Khagaria

.... Petitioners

Versus

1. The State Of Bihar
2. Sri Purushottam Lal Tibrewal Son Of Late Nand Lal Tibriwal R/O Mohalla- Mill Road Khagaria, P.O. + P.S. + District- Khagaria

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Subodh Kumar Jha, Advocate
Mr. Roshan Kumar Mishra, Advocate
For the Opposite Party No.2 : Dr. Indewar Kumari, Advocate
For the O.P.No.2 : Mr. Binod Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-08-2017

This Criminal Miscellaneous application under Section 482 of the Cr.P.C. has been filed to quash the order dated 27.02.2013 passed by learned CJM, Khagaria in Complaint Case No.978(C) of 2011 whereby and whereunder the learned Magistrate finding prima-facie case for the offence under Sections 406, 420 and 120B of the IPC summoned the petitioners. They have further prayed further to quash the order dated 23.10.2013 passed by Ist Additional Sessions Judge, Khagaria in Cr.Revision No.28 of 2013 whereunder he refused to set aside the cognizance.

2. Heard and perused the record.

3. The facts in brief is that the Opposite Party No.2 filed a complaint



case on the file of CJM alleging inter-alia that his father had established a trust, namely, Basanti Seva Sadan by executing a deed of gift dated 05.02.1971. The father of Opposite Party No.2 was the main trustee out of total five trustee became main trustee and after the death of other trustees who were nominated by the father of Opposite Party, the OP no.2 nominated these petitioners as trustee and subsequently he revoked them as per resolution taken on 05.09.2010 and a verbal order was issued on 27.09.2010 directing the petitioner no.2 to produce pass-book, cheques book, cash book etc. The petitioners allegedly withdrew an amount of Rs.37,554/- illegally and did not deposit the day to day income of the school and misappropriated the said money. The learned Magistrate enquired into the matter under Section 202 of the Cr.P.C. and finding prima-facie case for the offence in question summoned the petitioners.

4. It has been submitted that the petitioner nos.1 and 2 were nominated trustee by virtue of deed of gift dated 05.02.1971. The father of petitioner no.2 had executed registered deed of gift for establishing school library etc for the benefit of Agrawal community. The petitioner nos.1 and 2 admittedly were nominated by the members of the trustee. The complainant removed these petitioners and executed another trust deed. It has been submitted that the complainant had no right to revoke the earlier deed of gift executed by his father in the year 1971 and execute any trust deed. The petitioners were running school as per resolution of the committee. They withdrew the amount for payment of salary to the teachers and other employees of the school. The learned counsel in support of his contention produced the details of account. It was further submitted that there is absolutely no entrustment of any property to the petitioners so as to make out a case of breach of trust. The allegation of cheating is also vague as the petitioners being trustee had performed their job. The father of complainant had



initially gifted the vacant land over which the school was established. The complainant in order to establish a clinic for his son want to take possession over the said land. The dispute between the parties is purely a civil dispute and so their criminal prosecution cannot be sustained and the order taking cognizance is fit to be quashed.

5. Learned counsel for the Opposite Party No.2 on the other hand submitted that the offences of breach of trust and cheating are established in view of fact that the petitioners deposited the said amount of Rs.37,000/- in the Nazarat of Civil Court as per undertaking given before this Hon'ble Court at the time of hearing of anticipatory bail petition in Cr.Misc.No.4712 of 2014 and so the Magistrate has rightly taken cognizance against the petitioners.

6. On perusal of complaint petition as well as annexures available on record, I find that the father of Opposite Party No.2 had executed a deed of gift in favour of Basanti Seva Sadan, Khagaria and a committee was constituted to look after the affairs of trust for the benefit of Agrawal community. The petitioners no.1 and 2 were nominated as trustee as per resolution of the committee. The complainant on 05.09.2010 passed a resolution unilaterally and removed the petitioner nos.1 and 3 from the committee stating therein that these petitioners had expressed their desire to leave the trust. The said resolution admittedly was passed in absence of these petitioners as the resolution does not contain the signature of the petitioners. The learned counsel for the Opposite Party No.2 does not dispute the genuineness of annexures on record. The petitioners at the time of hearing of bail petition under took to deposit the amount which were withdrawn by them for payment of salary to the teachers without any prejudice to the merit of the case. The dispute between the parties appears purely a civil dispute in view of the fact that the complainant executed another trust deed without having any right to do



so. The dispute between the parties is purely a civil dispute and the petitioners acted in the capacity of the trustee bonafide on the basis of trust deed. In such circumstance, the prosecution of the petitioner would amount to abuse of the process of the Court.

7. In the aforesaid facts and circumstances, the impugned order taking cognizance and also their criminal prosecution arising therefrom is quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.08.2017
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