

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20996 of 2013

Arising Out of PS.Case No. -134 Year- 2010 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

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1. Kailashpati Mandal, S/O Late Narsingh Mandal,
 2. Prabhakar Sharma, S/O Late Narsingh Mandal,
 3. Amarkant Sharma, S/O Late Narsingh Mandal,
 4. Alok Kumar Sharma @ Alok Sharma, S/O Prabhakar Sharma,
 5. Pandit Sharma, S/O Prabhakar Sharma,
 6. Dharendra Sharma, S/O Prabhakar Sharma,
 7. Pampam Sharma, S/O Prabhakar Sharma,
 8. Rinku Kumar, S/O Amar Kant Sharma,
 9. Tinku Kumar, S/O Amar Kant Sharma,
 10. Ajay Kumar Mandal @ Tuntun Mandal, S/O Late Nandlal Mandal,
 11. Mani Kant Mandal, S/O Late Nandlal Mandal, all resident of Mohalla-
Rahamatulla, Dildarpur, Nil Kothi, P.S.- Nathnagar, District- Bhagalpur,
 12. Uttam Mandal, S/O Late Krishna Mohan Mandal,
 13. Dileep Mandal, S/O Late Krishna Mohan Mandal, both resident of village-
Ajmeripur Basa Ratwari, P.S.- Kishunpur Ratwara, District- Madhepura,
 14. Kuldeep Mandal, S/O Late Kisan Mandal,
 15. Uma Kandal Mandal, S/O Late Saudagar Mandal, R/O Village- Ajmeripur,
P.S.- Nathnagar, District- Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar,
2. Chama Lal Sharma, S/O Late Brahmdeo Mandal, R/O Village- Ajmeripur, P.S.-
Nathnagar, District- Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Jha, Advocate
For the State : Mr. Deepak Kumar Sinha, APP
For the Opposite Party No.2: Mr. Bijoy Kant Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 30-01-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 05.03.2013 passed by the Judicial Magistrate, 1st class, Bhagalpur, in Complaint Case No.134 of 2010, whereby the learned Magistrate



after enquiry has found *prima facie* case against the accused persons to proceed under Section(s) 465, 471/34 Indian Penal Code.

2. It has been submitted on behalf of the petitioners that the nature of dispute as appear from the Complaint Petition is purely civil dispute. The joint property had been partitioned through Panchayati, which the complainant claims as forged and fabricated. The witnesses have also been made accused in the case. Cognizance taken by the learned Magistrate is barred by the provision of Section 468 (2) Cr. P. C.

3. Learned APP has submitted that there is no illegality in the impugned order.

4. From perusal of the impugned order and the allegations made in the complaint as well as the materials available on case record, I find that that the complainant has filed Complaint Petition against the petitioners alleging therein that 156 Bighas agricultural land situated in mouza- Kishunpur under the District- Saharsa (now Madhepura) and in mouza- Mohanpur, Rattipur, Dharmdaspur, Gosaidaspur, Rahimatullahpur and Bhatuachak in the district of Bhagalpur, as mentioned in the Complaint Petition, were in the name of both the parties and after partition both the parties came in possession over their allotted share. The complainant- Opposite Party No.2 also came in possession over his share after the death of his father, namely, Brahmdeo Mandal. Further case of the



complainant is that the complainant-Opposite Party No.2 sold six decimals of land out of total allotted share of 1.04½ decimal land of Gosaidaspur to one Pramod Mandal on 22.07.2009 through registered sale deed and the said Pramod Mandal started construction over the said purchased land, but on 29.07.2009 petitioners made objection and the petitioner No.3 gave application before the Station House Officer, Nathnagar, Bhagalpur, for initiating proceeding under Section 144 Cr. P.C. over the said land. The police during enquiry called both the parties along with their documents. The petitioners produced Xerox copy of deed of partition done by the Panches on 29.05.1960 before the police. The complainant-Opposite Party No.2 alleged that the petitioners had prepared the aforesaid partition deed dated 29.05.1960 as forged on which father of the complainant-Opposite Party No.2 had never put his signature. Further case of the complainant-Opposite Party No.2 is that father of the complainant had no knowledge about such type of partition deed. Thereafter, the complainant met witnesses i.e. petitioner Nos.14 and 15, who had allegedly signed on the said partition deed, but they flatly denied by saying that neither father of the complainant-Opposite Party No.2 nor petitioner Nos.14 and 15 have made any signature over such type of forged partition deed.

5. During course of enquiry under Section 202 Cr. P.C., Solemn Affirmation of the complainant-Opposite Party No.2



along with the statement of one enquiry witness, namely, Sukhraj Mandal was recorded by the learned Magistrate. The learned Magistrate after perusal of the Solemn Affirmation of the complainant and the statement of sole enquiry witness found *prima facie* case against all these petitioners under Sections 465, 471/34 Indian Penal Code.

6. Learned counsel for the petitioners has submitted that the petitioners and the complainant-Opposite Party No.2 had jointly filed Title Suit No.215 of 1987 for partition of ancestral land on the basis of amicable family partition deed dated 29.05.1960 and demanded partition of the ancestral property on the basis of aforesaid family partition deed dated 29.05.1960.

7. In the present complaint case, the complainant-Opposite Party No.2 is denying existence of partition deed dated 29.05.1960. The complainant-Opposite Party No.2 had deliberately mentioned in the Complaint Petition that prior to 31.07.2009, he had no knowledge about the existence of partition deed dated 29.05.1960, whereas, the complainant-Opposite Party No.2 was a party in the Title Suit filed in the year 1987 on the basis of aforesaid partition deed dated 29.05.1960.

8. It has further been submitted by the learned counsel for the petitioners that Title Suit No.215 of 1987 was decreed against the complainant-Opposite Party No.2 and the petitioners by Sub-



Judge, 3rd, Bhagalpur, by judgment and decree dated 21.12.1994. Against the said judgment and decree dated 21.12.1994 passed in Title Suit No.215 of 1987, complainant-Opposite Party No.2 and the petitioners have jointly preferred First Appeal No.112 of 1995 before the Hon'ble High Court, Patna, in which complainant-Opposite Party No.2 has figured as Appellant No.21. The aforesaid First Appeal is still pending in the Hon'ble High Court. Learned counsel for the petitioner submits that in this way when the Civil Suit is already pending, the order of cognizance is bad in the eye of law.

9. Counsel for the complainant-Opposite Party No.2 has not denied the filing of Title Suit No.215 of 1987 jointly by the petitioners and the complainant-Opposite Party No.2. Similarly, there is no denial about the pendency of First Appeal No.112 of 1995 against the judgment and decree passed in Title Suit No.215 of 1987 in which the name of the complainant-Opposite Party No.2 figures as Appellant No.21.

10. In this manner, it is admitted position that on the basis of partition deed dated 29.05.1960, which the complainant in the present complaint has alleged as forged and fabricated document, Title Suit No.215 of 1987 was filed, in which both the petitioners and the complainant-Opposite Party No.2 demanded partition of ancestral property on the basis of aforesaid family partition deed dated 29.05.1960. First Appeal No.112 of 1995 is still pending in the



High Court against the judgment and decree passed in Title Suit No.215 of 1987, in which the complainant-Opposite Party No.2 also figures as Appellant No.21.

11. In such circumstances, this Court is of the view that continuance of the criminal proceeding against these petitioners is abuse of the process of law. Civil litigation between the parties is already pending with respect to the aforesaid deed of partition dated 29.05.1960 vide First Appeal No.112 of 1985 in which the complainant-Opposite Party No.2 figures as Appellant No.21.

12. Accordingly, the order of cognizance dated 05.03.2013 passed by the Judicial Magistrate, 1st class, Bhagalpur, in Complaint Case No.134 of 2010, along with entire proceeding against the petitioners is hereby quashed.

13. The application stands allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	11-01-2017
Uploading Date	05-02-2017
Transmission Date	05-02-2017

