

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 15811 of 2014

Arising Out of P.S. Case No.-548 Year-2011 Thana- SAHAYAK NAGAR District- Katihar

1. Ajay Kumar Gupta, Son of Sri Nathi Lal Gupta.
2. Sunita Gupta, Wife of Ajay Kumar Gupta.
Both Resident of Mohalla- Churi Patti, P.S- Town, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gopal Prasad Mandal, Son of Pachu Prasad Mandal, Resident of Village-
Nayatola, Bahadurpur, P.S. Manihari, District- Katihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vinay Ranjan, Advocate
For the Opposite Party No. 2	:	Mr. Rajesh Kumar Jha and Mr. Prem Kumar Jha, Advocates
For the State	:	Mr. Pronoti Singh, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 20-02-2019

Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. Despite service of notice on opposite party no. 2 and
learned counsel entering appearance on his behalf and name of
learned counsel also printed in the cause list, nobody appeared
when the matter was taken up and heard.

3. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:

*“That this is an application for
quashing the order taking cognizance dated*



6.3.2013 passed by the learned Chief Judicial Magistrate, Katihar in connection with Katihar Town P.S. Case No. 548/2011 by which the learned Chief Judicial Magistrate was pleased to take cognizance for the offences under sections 419, 420, 467, 468, 471, 120(B) of the Indian Penal Code and the petitioners were summoned for facing trial and further for quashing the charge sheet bearing Charge Sheet No. 312/2012 dated 31.12.2012.”

4. The allegation against the petitioners is that they got sale deed of the land belonging to the opposite party no. 2 executed by getting an impersonator stand up of him for the said purpose.

5. Learned counsel for the petitioners submitted that though on merits, he has a good case since it was the opposite party no. 2 himself who had filed various applications before the authorities and had himself executed the sale deed, but in law also the present case is totally an abuse of the process of the Court. It was submitted that for the same grievance and making the same allegations, the opposite party no. 2 had filed Complaint Case No. 1454 of 2010 before the Chief Judicial Magistrate, Katihar on 22.05.2010. It was submitted that the present complaint made before the Director General of Police, Bihar on 08.09.2010 being more than three and a half months after filing of the complaint and without disclosing the same was itself *mala fide*. Further, it was submitted that in the complaint case, cognizance has also been



taken by the Court on 15.03.2011. Learned counsel submitted that two criminal proceedings based on the same facts by the same complainant/informant is clearly overreaching the law and unfit to be sustained.

6. Learned A.P.P., upon going through the case diary, submitted that cognizance has been taken on the basis of materials available in the same. However, on a direct query of the Court as to how a second criminal proceeding is maintainable raising identical grievance/allegations, she could not justify the same.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. Once the process of law on the criminal side has been set into motion by any person, it is no longer open to him to initiate another criminal proceeding based on identical facts. In the present case, only upon the complaint case having attained finality, it would have been open to the opposite party no. 2 to take any further steps, in accordance with law, depending on the outcome of the complaint case. Moreover, both the complaint case and the F.I.R. is also against the same persons without there being any difference of any sort.



8. After the order was passed, learned counsel for the opposite party no. 2 appeared and submitted that he has no instructions from his client and he had taken away the file long back and after that has not again either given the file or any fresh instructions.

9. Accordingly, the application stands allowed. The entire proceeding arising out of Katihar Town P.S. Case No. 548 of 2011, including the order taking cognizance dated 06.03.2013, as far as it relates to the petitioners, stand quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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