

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34146 of 2014

Arising Out of PS.Case No. -223 Year- 2012 Thana -NANHPUR District- SITAMARHI

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1. Bibi Najda Khatoon, wife of late Mokhtar,
 2. Md. Jane Alam, son of late Abid Hussain, both resident of Singhachauri Tole Tharuhar, P.S. Nanpur, District- Sitamarhi,
 3. Apurva Narayan Rai, son of Bindeshwar Rai, resident of village- Dhadhi, P.S.- Nanpur, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Eklakh, son of late Abdul Hafiz, resident of Singhachauri Tole Tharuhar, P.S. Nanpur, District- Sitamarhi.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Jha, Advocate
For the Opposite Party/s : Mr. Manoj Kumar, APP
Mr. Mazharul Hasan, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 11-04-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 16.11.2013 passed by the Judicial Magistrate, 1st class, Pupri, Sitamarhi, in Nanpur P.S. Case No.223 of 2012 by which the learned Magistrate has taken cognizance against the petitioners for the offence under Section(s) 420, 467, 469, 471, 120-B Indian Penal Code.

2. The Complainant/Informant has alleged in the Complaint Petition, which was sent to P.S. under Section 156(3) Cr. P. C., that father of the Complainant/Informant died on 25.07.2000.



The Complainant/Informant was residing in Kolkata along with his family for the last 12-13 years. He used to visit his native village from time to time. The Complainant/Informant came to know that petitioner no.2 got forged sale deed executed in favour of petitioner no.1 with respect to the land bearing Khata no.416 and Khesra No.3355. The Complainant/Informant got Xerox copy of the sale deed from petitioner no.1 and got the same compared with another sale deed executed by his father in 1998.

3. Both sale deeds have been annexed as Annexure-B series to the Counter Affidavit. The Complainant/Informant obtained copy of the sale deed and got the same examined from Finger Print Expert and on examination of both the sale deed i.e. executed by petitioner no.1 and another said to be executed by late father of the Complainant/Informant in 1998 were found containing different finger print. The Complainant/Informant has alleged that accused no.2 was identifier in the sale deed dated 23.09.2000 and another accused was witnesses. The Complainant/Informant has alleged that although his father died on 25.07.2000, the accused persons got the sale deed executed fraudulently by impersonating a fake person in place of his father. The Complainant/Informant also alleged that the land is in his possession.

4. The police after investigation submitted final form



in the case and recommended for prosecution under Sections 182, 211 Indian Penal Code against the Complainant/Informant. The police during investigation reported that father of the Complainant/Informant died in the year 2004 and the Complainant/Informant wrongly stated that his father died in the year 2000.

5. Counsel for the petitioners has submitted that after execution of the aforesaid sale deed mutation of the land has also been done by the competent authority in their favour. If the informant has any grievance, he has remedy to move the competent Civil Court for cancellation of sale deed. Therefore, no criminal case is made out. Counsel for the petitioners has further submitted that it is purely civil dispute for which Complainant/Informant has remedy and criminal prosecution is nothing but abuse of the process of law and is, accordingly, fit to be quashed.

6. Informant/Complainant has filed Counter Affidavit stating therein that father of the Complainant/Informant died on 25.07.2000. Co-accused persons in conspiracy got the sale deed executed in favour of petitioner no.1 on 23.09.2000 with respect to the land of Khata no.416, Khesra no.3355. It has been stated in the Counter Affidavit that father of the Complainant/Informant has died on 25.07.2000 in support of which one Death Certificate has been



filed on behalf of the Complainant/Informant along with two sale deeds out of which one sale deed is alleged to have been executed after death of his father, which has been marked as Annexure-B series. Counsel for the Opposite Party No.2 has further submitted that Xerox copy of both the sale deeds were sent to Mr. Purushottam Chatterjee, Document Examiner, 77-B, Durga Charan Doctor Road, Kolkata. He submitted in the report that he found different finger prints on both the documents. Report of Examiner has been annexed as Annexure-C to the Counter Affidavit.

7. Lower Court records have been received in this case.

8. From perusal of the Annexure-C, which has been enclosed by the Complainant/Informant in the Counter Affidavit, it appears that Xerox copy of the deed was supplied to the Document Examiner. Request has been made by him to make arrangement to send original for examination, if necessary.

9. Main allegation levelled by the Complainant/Informant in the Complaint Petition against the petitioners is that after the death of his father on 25.07.2000, sale deed has been prepared and executed in the name of late father of the Complainant/Informant on 23.09.2000 in favour of Bibi Najda Khatoon by petitioner no.1 showing father of the



Complainant/Informant as vender of the aforesaid sale deed. Accused nos.2 and 3 are identifier and witness over the aforesaid sale deed. The Complainant/Informant has alleged that the aforesaid sale deed has been executed illegally to cause wrongful loss to the Complainant. It is also alleged that the aforesaid sale deed is forged. The Complainant/Informant sent the Xerox copy of the sale deed dated 23.09.2000 alleged to have been executed by his father and also Xerox copy of the earlier sale deed executed by his father on 16.09.1998 to private Document Examiner in Kolkata, who in his report has mentioned that he found different finger prints on both the documents.

10. Expert has also mentioned in the report that Deed No.5394 is a Xerox copy supplied to him. Arrangement should be made to send the original for examination, if necessary.

11. The police after investigation has submitted final form in the case. The police has reported that father of the Complainant/Informant died in the year 2004 and the Complainant/Informant has wrongly stated in the Complaint Petition that his father died in 2000.

12. The Complainant/Informant has annexed Death Certificate of his father in the Counter Affidavit as Annexure-A along with sale deed to show that death of his father took place on



25.07.2000.

13. This Court is of the view that all these materials are disputed question of facts, which can be properly adjudicated and determined only by competent Civil Court in Civil Suit. The execution of such document, at this stage, does not describe any criminal offence against the petitioners. The matter was already investigated by the police and the police has found the allegation incorrect and, accordingly, submitted Final Report.

14. Therefore, this Court finds that the Court below has committed illegality in passing the impugned order.

15. Accordingly, the impugned order dated 16.11.2013 passed by the Judicial Magistrate, 1st class, Pupri, Sitamarhi, in Nanpur P.S. Case No.223 of 2012 along with entire criminal proceeding against the petitioners is hereby quashed.

16. This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	01-02-2018
Uploading Date	11-04-2018
Transmission Date	11-04-2018

