

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13448 of 2012

=====

Shiv Shankar Choudhary son of Late Ram Lal Choudhary Resident of Patti
Badgaon, P.O. Bairo, P.S. Nauhatta, Distt. Saharsa

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Nageshwar Yadav son of Late Lakshman Yadav Bairo, P.S. Supaul, Distt.
Supaul

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Saket Tiwary, Advocate
For the State	:	Mr. Nawal Kishore Prasad, APP
For the Opp.Parties	:	Mr. Pramod Mishra, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date : 15-02-2018

Heard learned counsel for the petitioner and counsel for
the opposite party no.2.

This application under Section 482 of the Code of
Criminal Procedure has been filed for quashing the order dated
24.12.2011 by which the learned Sub Divisional Judicial
Magistrate, Supaul after holding enquiry under Section 202 of
the Cr. P.C. found prima facie case under Sections 420 and 471
of the IPC in complaint case no. 1371(c) of 2010 against the
petitioner.

Learned counsel for the petitioner has submitted that it is
a matter of purely civil dispute. The father of the petitioner has
purchased the land from one Muneshwar Prasad Singh which



has been enclosed as Annexure-4 to the supplementary affidavit. Muneshwar Prasad Singh had purchased the land from Bagiya Devi and Sushila Devi through registered sale deed which has been annexed as Annexure-2.

Learned counsel for the complainant-opposite party no.2 has submitted that in the sale deed executed by Bagiya Devi and Sushila Devi in favour of Muneshwar Prasad Singh there was interpolation with regard to plot no. from 4383 to 4388. It is further submitted that plot no. 4388 belongs to the complainant-opposite party no.2.

Learned counsel for the petitioner has, on the other hand, submitted that father of this petitioner has purchased the plot no. 4388 from Muneshwar Prasad Singh with boundary and area, as mentioned in the sale deed, executed by Bagiya Devi and Sushila Devi, in favour of Muneshwar Prasad Singh, wherein the plot no. has been mentioned as 4388. This petitioner after the death of his father came over possession of the aforesaid land and mutation has also been done in his name. Learned counsel further submitted that the complainant started making claim over the land then he has filed Title Suit no. 9 of 2009 in the Court of learned Sub Judge-1st Supaul which is pending. Learned counsel for the petitioner has relied upon a decision of



Hon'ble Supreme Court reported in **(2010)1 SCC 322**
Parminder Kaur vs. State of Uttar Pradesh & Anr and a
decision of our Hon'ble High Court reported in **2013(4) PLJR**
428 *Bibi Umaintun Nisa vs. Bibi Nasiba Khatoon & Anr.*

Learned counsel for the petitioner has submitted that no any criminal offence is made out if there is some misdescription of the number of plot in the sale deed. The Hon'ble Court in **Bibi Umaintun Nisa (supra)** has held that the title of the party will be dependent on the boundary and area of the land and land will be identified by the boundary and the area and if there is discrepancy in the plot no. then it will be only misdescription and error.

This Court after hearing the submissions of both the parties and on perusal of the records finds that the petitioner has earlier filed Title suit no. 9 of 2009 in the Court of learned Sub Judge, Supaul when the complainant started raising objection after purchase of land by his father from Muneshwar Prasad Singh. After filing of the aforesaid Title suit the instant case has been filed by the complainant on 21.11.2009. In such circumstances, it is a matter of purely civil dispute and a civil suit is already pending between the parties.

Learned counsel for the petitioner has submitted before



the Court that the complainant has already appeared in the Title suit and has filed written statement.

Therefore, the impugned order by which the cognizance has been taken against the petitioner along with the entire criminal proceedings against him is hereby quashed.

The Cr. Misc application is, accordingly, allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	09.03.2018
Transmission Date	09.03.2018

