

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39263 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- KATIHAR

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Sharwan Kumar Sharma S/O Late Krishna Kumar Sharma R/O Mohalla -
Durgapur, P.S. Katihar, Distt. - Katihar

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. D.N. Tiwari, Advocate

For the State : Smt. Renuka Ratnakar, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

CAV JUDGMENT

Date: 31-01-2018

Heard learned counsel for the parties.

2. The petitioner seeks quashing of the cognizance order dated 02.02.2011, passed by Judicial Magistrate, 1st Class, Katihar in Complaint Case No.C3248 of 2010 thereby taking cognizance of the offence under Sections 346, 420 and 468 of the Indian Penal Code.

3. The brief fact giving rise to the case is that a complaint was filed by opposite party no.2 against the petitioner on 22.11.2010 alleging therein that all accused persons coming into conspiracy with each other kept the complainant's father to some unknown place and compelled him to sign nine sale deeds in favour of accused persons and the same were executed on 26.08.2010. The signature of the complainant's father was forcibly taken on the sale deeds on 14.08.2010 thereafter the deed writer, Dinesh Prasad Yadav prepared those sale deeds. The sale deeds were executed despite injunction



order passed in the Title Partition Suit No.45 of 2009, knowing the existence of injunction order, the Registrar of Sub-Registry Office, Katihar registered the sale deeds. None of the co-villagers or any son of the complainant's father identified the executant of the sale deed, even consideration money was not paid. It is further alleged that after the execution of the sale deed, complainant's father was illegally confined till 25.09.2010 and left him a day near the airport on 26.09.2010 in serious condition and complainant's father was admitted in Katihar Hospital. After knowing this fact accused persons managed the doctor and on 27.09.2010 the father of the complainant was discharged from Sadar Hospital but on 09.10.2010 he died.

4. Learned counsel appearing on behalf of the petitioner submits that the father of the complainant wishfully without any coercion executed those nine sale deeds on 26.09.2010 before the Registrar and signature of the father of the complainant is not in dispute and it is also not alleged that it was forged. The complainant himself was on litigating terms with his father due to property dispute as he had filed a partition suit against him and his father has wishfully executed the sale deed, so after his death the present complaint case was filed; never before any complaint was made to police or any public authority with regard to his kidnapping. The father of the complainant had lodged FIR, i.e., Katihar Town P.S. Case No.95 of



2009 under Sections 307, 379 and other sections of the Indian Penal Code against his sons including the complainant, so his father executed the sale deed of his share, therefore, his son, the complainant lodged this false case. Moreover the petitioner was not a party to the partition suit so had no knowledge of any injunction order passed by the court, hence even taking into account the entire allegation as it is, no *prima facie* case of kidnapping, cheating or making of a false document is made out. The dispute is purely of civil nature. According to the complainant's case, the father was kidnapped on 13.08.2010 and wrongfully confined till 26.09.2010 but even thereafter till his death on 09.10.2010, no complaint was made by the father or the complainant or the complainant. Only after coming into knowledge of the execution of the sale deed by his father in favour of the petitioner, this false complaint case was lodged.

5. Contrary to that the learned counsel appearing on behalf of opposite party no.2 as well as the State submit that the allegations do make out a *prima facie*.

6. Having considered rival submissions and on perusal of records, the Court finds that the complainant and his father were on litigating terms, already a partition suit was subjudice in between them and a criminal case was also instituted by the father against his all sons showing the state of affair relating to acrimonious relationship



in between the father and son. There is no allegation that the signature on the sale deed executed by his father is not his signature. It is alleged that on 13.08.2010 his father was forcibly kidnapped by the accused persons but no complaint was lodged either with the police or any public authority or any complaint case was filed before the court. The father of the complainant never lodged any case against the accused persons while he was alive. Only after his death the present complaint has been filed by one of his sons, who was on inimical and litigating terms with his father, so even if the entire allegation alleged in the complaint is taken as it is, no ingredients of any offence of kidnapping, cheating and making of false document is made out rather the case suffers from absurdity and appears malicious in nature; hence the entire criminal proceeding inclusive of the cognizance order dated 02.02.2011, passed by Judicial Magistrate, 1st Class, Katihar in Complaint Case No. 3248C of 2010 with respect to the petitioner is hereby quashed.

7. The quashing application stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
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