

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42624 of 2011

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

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1. Abdul Noor, s/o late Ali Ahamad, r/o village - Makhadum Sarai Turaha Toil, PS + District – Siwan,
 2. Sita Ram Chaudhary, s/o late Rajbanshi Chaudhari, r/o village- Makhadum Sarai, Ahirtoli, PS- Sarai O.P.- District – Siwan,
 3. Vakil Ahamad, s/o Khalil Ahamad, r/o Makhadum Sarai Dakhin Tola, PS- Siwan, District – Siwan,
 4. Mokhatar Ahamad, s/o late Md. Kashim, r/o Mohalla - Makhadum Sarai Purab Tola PS - Sarai OP, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ashalam Hussain, s/o late Rashul Azam, r/o Muhalla- Makhadum Sarai Purab Tola, PS- Siwan Town, District- Siwan.

.... Opposite Party/s

With

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Criminal Miscellaneous No. 9062 of 2012

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

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1. Lala Bijay Bahadur Lal, Circle Inspector, Block Pacharikhi, P.S.- Pacharikhi, District- Siwan

.... Petitioner/s

Versus

1. The State of Bihar
2. Ashalam Hussain, s/o late Rashul Azam, r/o Mohalla- Makhadum Sarai Purab Tola, P.S.- Siwan Town, District- Siwan

.... Opposite Party/s

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Appearance:

(In Cr.Misc. No.42624 of 2011)

For the Petitioner/s : Mr. Chandra Kant, Advocate
Mr. Navin Kumar, Advocate

For the Opposite Party/s : APP
Mr. Yogendra Prasad Sinha, Advocate

(In Cr.Misc. No.9062 of 2012)

For the Petitioner/s : Mr. Chandra Kant, Advocate
Mr. Navin Kumar, Advocate

For the Opposite Party/s : Dr. Rabindra Kumar, APP
Mr. Yogendra Prasad Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 24-01-2018

1. Both the applications have been filed for quashing the



order dated 12.08.2011 passed by Shri Lalita Prasad, learned Judicial Magistrate, 1st, Class, Siwan in Complaint Case No. 2674 of 2010/TR. No.6463 of 2011 by which, the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 166, 167, 177 and 465 of the Indian Penal Code.

2. The complaint case, in brief, as per the Complaint Petition is that suit property was recorded in the Khatiyani in the name of Kudrat Jolaha and Md. Raja, sons of late Jhapsi. The Khatiyani Raiyat mortgaged the property to Ali Hussain Mian for Rs.270/- and by way of decree dated 13.03.1916, Kudrat Jolaha and Md. Raja mortgaged the entire land 11 Katha to Doma Mian on 24.04.1925 for Rs.525/- and Rs.270/- was deposited in the mortgage deed. Doma Mian redeemed the mortgage after having paid Rs.270/- to Ali Hussain. Most. Kheratan sold the 11 Kattha of disputed property to father of the complainant on 24.09.1943 and Doma Mian was paid mortgaged money and so long father of the Complainant was alive he remained in possession over the property and regularly paid rent to the State of Bihar. The landlord in return mentioned name of Abdul Samad and Md. Rasool Azam and, accordingly, name of Abdul Samad and Rasool Azam was mentioned in Register II along with Kapoor Jolaha. Jamabandi No.237 was created in Register II in the name of Abdul Samad and Rasool Azam. Father of the



Complainant paid the rent and got rent receipt from the Govt. of Bihar. It is alleged that accused nos.2 and 3 in conspiracy with other accused persons got the old page of Register II torn and pasted new page without order of any competent authority and entered the name of Ali Ahmad Jolaha, father of accused no.1 in Register II after tearing the old page from Jamabandi register and entering the receipt for the year 2002-03 in Register II vide receipt no.756490 in the name of Ali Ahmad Jolaha. Matter was investigated by the DCLR and Jamabandi No.307 was found in the name of Ganga Prasad and all the receipt issued in the name of Ali Ahmad by the Karamchari was found to be forged. Accused nos. 2 and 3 are still issuing receipt in the name of father and uncle of the Complainant and collecting money from them and at the same time issued forged receipt with respect to the land of the Complainant in the name of father of Abdool Noor. In this manner, accused persons in conspiracy have illegally tampered Register II and entered the name of Ali Ahmad Jolaha.

3. The Complainant made complain against accused persons before the District Magistrate, Siwan, for such act, which was got enquired by the DCLR, Siwan. The DCLR, Siwan, in his enquiry report has found cutting and forgery in Register II and issuance of rent receipt true. The DCLR, Siwan, sent the enquiry report to the District Magistrate, Siwan, but no action was taken by



the District Magistrate, Siwan.

4. The Complainant alleged that in this manner accused persons after getting the old page of Register *II* torn, got pasted the new page and created new *Jamabandi* in the name of father of accused no.1 and got issued forged rent receipt causing great loss to the Complainant.

5. Counsel for the Petitioners of Cr. Misc. No.42624 of 2011 has submitted that there is already civil suit pending between the parties for the same cause of action. Petitioners have no power to make any change in the revenue records. It is the State officials, who are custodian of the record. Learned counsel for the petitioners has submitted that if mutation was done by the State Official in the revenue record in favour of the petitioners in place of the Complainant then that order is appellable and the Complainant ought to have challenged the aforesaid order in mutation appeal. Five cases are pending over the same land between the parties.

6. Counsel for the petitioner of Cr. Misc. No.9062 of 2012 has submitted that he is Circle Inspector of Panchrukhi Block, District-Siwan. There are five cases pending between the parties including one Title Suit bearing Title Suit No.482 of 2010 in the Court of Sub Judge I, Siwan, for declaration of title and confirmation of possession of the Complainant on the suit land. The petitioner being Circle Inspector has no power to make any change in the



revenue record. The Circle Officer is custodian of the records and he is liable for the forgery committed in the revenue record. It is further submitted that if mutation was done by the State Official in the revenue records in favour of the accused persons in place of the Complainant then the order is appellable. The Complainant ought to have challenged the order of mutation by filing appeal.

7. Counsel for the Opposite Party No.2 has submitted that forgery has been committed by the accused persons in the revenue records by tearing the old page of Register II and pasting new page and entering name of father of accused no.1 in place of the Complainant.

8. Entire lower court records have been received in Cr. Misc. No. 42624 of 2011.

9. From the lower court records, it appears that besides solemn affirmation of the Complainant, statement of two witnesses, namely, Ali Akhtar Hussain and Haji Ahmad Azad alias Haji Ji have been recorded. All the witnesses have supported the allegation against the accused persons of committing forgery in Register II by tearing the old page and pasting new page and also entering the name of the father of accused no.1, namely, Ali Ahmad, in place of the Complainant.

10. The Complainant has stated in the Solemn Affirmation that DCLR, Siwan, has enquired into the matter and



found that after tearing old page in Register II, new page has been pasted and name of Ali Ahmed has been entered.

11. Learned Magistrate is only required to see *prima facie* case at the time of enquiry on the basis of allegation in the Complaint Petition and the statement of the witnesses recorded during enquiry. All the witnesses have supported the case as mentioned in the Complaint Petition during their statement before the learned Magistrate at the time of enquiry.

12. In view of such, this Court does not find any illegality in the impugned order.

13. Both the applications are, accordingly, **dismissed**.

14. Petitioners are given liberty to raise all the points, as raised in the present applications, at the time of framing of Charge, which shall be considered and disposed off by the learned Court below in accordance with law without being prejudiced by this order.

15. Let the lower court records be returned to the Court below forthwith.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	09-10-2017
Uploading Date	30-01-2018
Transmission Date	30-01-2018

