

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18888 of 2014

Arising Out of PS. Case No.-2501 Year-2009 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Satyendra Singh @ Daldal Singh Son of Late Kripa Singh
 2. Vinod Kumar Singh @ Vinod Singh Son of Late Kripa Singh
 3. Pramod Kumar Singh @ Pramod Singh Son of Late Kripa Singh
- All R/o Village Mahaddipur, P.S. Gaurichak, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Umesh Prasad Singh Son of Late Deo Prasad Singh R/o Village-
Allaudinchak, P.S. Punpun, District -Patna, at present residing at Mohalla
Munnachak, Flat No. C/212, in Hope Mahindra Apartment P.S. Patrakar
Nagar, District Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Naresh Dikshit
For the Opposite Party/s : Mr. ABHAY KUMAR 1(APP)

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 15-03-2018

Heard learned counsel for the petitioners and the learned APP
for the State.

2. Despite service of notice to opposite party no.2 through the
learned counsel representing him in the court below, he did not
appear.

3. The petitioners seek quashing of the order of cognizance
dated 21.04.2010 as well as order dated 13.07.2012, passed in
Complaint Case No.2501(C) of 2009 by the Judicial Magistrate, 1st
Class, Patna thereby taking cognizance of the offence under



Section 420 of the Indian Penal Code as well as setting aside the subsequent criminal proceeding.

4. The complainant Umesh Prasad Singh, opposite party no.2, of this application filed a complaint alleging that accused nos.1 to 3 sold 11 kaththas of land in favour of accused nos.4 to 6 despite knowing the fact that the said land was allotted in share of the complainant by a decree and judgment passed in Title Partition Suit No.384 of 1996 in favour of the complainant, so gained monetary benefit as wrongful gain and dishonestly cheated the complainant.

5. Learned counsel for the petitioners submits that petitioner nos.1 to 3 are agnates, co-sharers in the ancestral property, though the decree was passed in favour of the complainant in Title Partition Suit No.384 of 1996 but the petitioners against that judgment and decree have preferred First Appeal No.97 of 2002 and that matter is still sub-judice. It is further submitted that there is no inducement to the complainant as well as no delivery of property by the complainant in favour of the accused persons.

6. Learned counsel for the State concedes to the aforesaid submissions.

7. Having considered the rival submissions and on perusal of the record, the Court finds that the case was not instituted by the



purchasers of the land from the accused persons. The crux of the allegation is that the accused nos.1 to 3 sold the land without having any right and title over the land but they claim the share in the land in question and First Appeal No.97 of 2002 is sub-judice and pendency of the First Appeal is continuation of the Title Suit. Cheating is defined under Section 415 of the Indian Penal Code. According to the said definition, if a person is persuaded to do something and so deceived by way of fraudulent or dishonest act as a result he delivers any property to other person or consents to retain that property or intentionally persuades the deceived person to otherwise do or omit he would not have done it, causing damage or harm to that person in body, mind, reputation or property only in these circumstances the offence of cheating is attracted. In the present case, there is no deception or inducement made by the accused persons to the complainant, consequently there is no delivery of any property by the complainant in favour of the accused or any consent to retain any property earlier handed over to the accused persons. In the backdrop of the facts of the case even taking the entire allegation in totality, no *prima facie* case of cheating is made out as there is *bona fide* dispute between both the parties relating to share and title of the land in question hence, the continuation of the criminal proceeding would be abuse



of the process of the Court, so order of cognizance dated 21.04.2010 as well as order dated 13.07.2012, passed in Complaint Case No.2501(C) of 2009 by the Judicial Magistrate, 1st Class, Patna and subsequent entire criminal proceeding initiated against the petitioners is quashed.

8. The quashing application stands allowed.

(Arun Kumar, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.03.2018
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