

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26724 of 2013

Arising Out of PS.Case No. -2123 Year- 2010 Thana -PURNIA COMPLAINT CASE District-
PURNIA

- =====
1. Om Prakash Agrawal, son of Late Ram Swaroop Agrawal,
 2. Santosh Devi, wife of Om Prakash Agrawal, resident of Banmankhi, P.S.-
Banmankhi, District- Purnia

.... Petitioner/s

Versus

1. The State of Bihar
2. Navratan Golchha, son of Lunkaran Golchha, grand son of late Ram Lal
Golchha, permanently residing at Banmankhi, P.S.- Banmankhi, District-
Purnia. Presently residing at 48/49, Bangar Avenue, Block D, Kolkata-55

.... Opposite Party/s

With

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Criminal Miscellaneous No.33613 of 2013

Arising Out of PS.Case No. -2123 Year- 2010 Thana -PURNIA COMPLAINT CASE District-
PURNIA

- =====
1. Subodh Kumar Singh, son of Shiva Mangal Singh, resident of Banmankhi, P.S.-
Banmankhi, District- Purnia,
 2. Mul Chand Setia, son of Late Manik Chandra Setia, resident of D.N. 301, 3rd
Floor, 8/A, Krishna Villa Apartment, 24 Main J.P. Nagar, 5th Phase, Bangalore-
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.... Petitioner/s

Versus

1. The State of Bihar
2. Navratan Golchha, son of Lunkaran Golchha, grand son of late Ram Lal
Golchha, permanently residing at Banmankhi, P.S.- Banmankhi, District-
Purnia. Presently residing at 48/49, Bangar Avenue, Block D, Kolkata-55

.... Opposite Party/s

With

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Criminal Miscellaneous No.41776 of 2013

Arising Out of PS.Case No. -2123 Year- 2010 Thana -PURNIA COMPLAINT CASE District-
PURNIA

- =====
1. Hanuman Mal Golchha,
 2. Ratan Lal Golchha,
 3. Tola Ram Golchha, (presently residing at SBM Computer, B6/3, Modi Tower,
Nehru Place, New Delhi-19),
 4. Shikhar Chand Golchha, (presently residing at Bucha Mohalla, P.O.-Lunkaran,



Town & District Bikaner, Rajsthan)

5. Jas Karan Golchha, (presently residing at Naveen Polymers and Chemicals, 219 B-Old China Bazar Street, First Floor, Kolkata-1), all sons of late Ram Lal Golchha, permanently residing at Indira Chowk, New Lane, Post-Ganga Town, District-Bikaner, Rajasthan,
6. Shanti Devi Tater, wife of Sri Chagan Mal Tater and daughter of late Ram Lal Golchha, residing at Old Lane, Behind Mahavir Chowk, P.O.-Ganga Town & District- Bikaner, Rajasthan
7. Kamal Setia, wife of Hansraj Jee Setia and daughter of late Ramlal Golchha, residing at Bilasipara, District-Gwalpara, Assam

.... Petitioner/s

Versus

1. The State of Bihar
2. Navratan Golchha, son of Lunkaran Golchha, grand son of late Ram Lal Golchha, permanently residing at Banmankhi, P.S.- Banmankhi, District-Purnia. Presently residing at 48/49, Bangar Avenue, Block D, Kolkata-55

.... Opposite Party/s

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Appearance:

(In Cr. Misc. No.26724 of 2013)

For the Petitioner/s : Mr. Sanjiv Sharan, Advocate

For the Opposite Party/s : Mr. Ajay Kumar, APP

Mr. Sarveshwar Tiwary, Advocate

(In Cr. Misc. No.33613 of 2013)

For the Petitioner/s : Mr. Sanjay Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Ajay Kumar-1, APP

(In Cr. Misc. No.41776 of 2013)

For the Petitioner/s : Mr. Amal Kumar Sinha, Advocate

For the Opposite Party/s : Mr. Binod Kumar, APP

Mr. Umesh Kumar Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 09-04-2018

These applications under Section 482 of the Code of Criminal Procedure have been filed for quashing the order dated 07.02.2013 passed by the Judicial Magistrate, 1st class, Purnea, in Complaint Case No.CA 2123 of 2010, by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 420 and 120-B Indian



Penal Code.

2. As per Complaint Petition, accused nos.1 to 7 are near relative of Opposite Party No.2 (Complainant). Grand father of Opposite Party No.2 had acquired 20 decimal of land at Banmankhi, Mauza Chakla and built a house upon that land. Grand father of the Opposite Party No.2 also acquired some landed property in addition to this in Rajasthan. It is alleged that 20 decimals of land in Banmankhi was given to the father of the Complainant and his other property was co-parcener property. It is alleged that Partition Suit was filed at Bikaner by sons of late Ram Lal Golchha (grand-father of the Complainant) for partition of ancestral property and decree was passed in the aforesaid Partition Suit through mutual agreement. The land and the house of Banmankhi were declared in the aforesaid partition in the share of father of Opposite Party No.2.

3. The Complainant's father continued to have right, title and possession over the aforesaid property. He let out the aforesaid house to one Panna Lal Jain on rent, who is still living in that house. It is alleged that all the accused in connivance with each other executed sale deed in favour of accused nos. 8 and 9 on 11.05.2010 by mentioning wrong facts in the aforesaid sale deed. Accused no.10 and 11 put their signature over the aforesaid sale deed. The sale deed was executed by accused no.5 on the basis of



Power of Attorney given by accused nos.1 to 7 in conspiracy to each other to cause loss to the father of the Complainant.

4. Counsel for the petitioners has submitted that order of cognizance is bad in law because civil remedy is available to the Complainant. Land revenue was paid with respect to the aforesaid land in the name of Ram Lal Golchha till 26.04.2008. Thereafter, revenue receipt of the said land was issued in the name of all the sons of Late Ram Lal Golchha including the name of Complainant's father Luna Karan Golchha. Xerox copy of the rent receipts have been enclosed as Annexure-3-A and 3-B. Petitioner no.1 (Cr. Misc. No.26724 of 2013), who purchased the land, got information through RTI that name of all the accused persons along with father of the Complainant except petitioner nos.6 and 7, are recorded in the rent tax fixation application. As per Hindu Law, share of the Complainant was carved out. Share of the Complainant was found 12.5% and rest 87.5% was share of accused nos.1 to 7. Accused no.1 to 7 gave Power of Attorney with respect to 87.5% pursuant to aforesaid 20 decimal lands in Banmankhi. The purchasers or accused no.1 to 7 have no concern with 12.5% share of land of the Complainant. The Complainant has not filed any suit for cancellation of sale deed executed by accused nos.1 to 7 and purchased by accused nos.8 & 9. Even from the content of the Complainant no case under Sections



420, 120-B Indian Penal Code is made out.

5. Counter Affidavit has been filed by the Complainant-Opposite Party No.2 stating therein that Partition Suit No.47 of 1999 was brought at Bikaner in respect of the ancestral joint family properties in which parties resolved the dispute through compromise on the basis of which compromise decree was passed on 03.07.2000. Since the agreement was arrived at to give 20 decimals of landed property at Banmankhi, Purnea, to the branch of Lunkaran Golchha (father of the Complainant) and other properties at Banmankhi, Purnia, to Hanumanmal Golchha (second son of Ram Lal Golchha), those properties of Banmankhi were not included in Partition Suit or its compromise, which was finally arrived at. This also confirmed that all the parties had accepted that 20 decimals of landed property at Banmankhi, Purnea, was given to the branch of father of the Complainant and other properties at Banmankhi, Purnea, were given to the second son of Ram Lal Golchha. Father of the Complainant in view of the aforesaid facts had been coming in peaceful possession over 20 decimals of land and house thereon in Banmankhi. He inducted tenant independently, namely, Sri Panna Lal Jain, who is still continuing there.

6. The accused nos.1 to 7 conspired with other accused to cause harm to the father of the Complainant and accused



no.5 illegally executed sale deed on 11.05.2010 in favour of accused nos.8 and 9 of the Complaint Petition, on the basis of Power of Attorney given by accused nos.1 to 7. Grand-father of the Complainant, Ram Lal Golchha, during his life time executed a will on 17.07.1996 stating therein about his family composition and his wish and desire therein to give aforementioned Banmankhi, Purnia property of Khata no.179, Khesra No.258 to Sri Manoj Kumar, son of Lunkaran Golchha (full brother of the Complainant) and no other son and daughter of the testator of the Will would have any concern or any right, title and interest therein. Jaskaran Golchha (accused no.5) was one of the witnesses on the Will. The other witness was Panmal Samsukha. Xerox copy of the said Will has been annexed as Annexure-A to the Counter Affidavit. All the other sons and daughters of Ram Lal Golchha were aware of these facts and developments and yet they gave Power of Attorney in favour of Jaskaran Golchha (accused no.5), who was one of witnesses on Will. Jaskaran Golchha executed the sale deed in respect of the same property in favour of accused nos.8 and 9. This fact alone proves guilty and dishonest mind of the accused persons and their criminal intention to cause wrongful loss to the Complainant.

7. The Partition Suit at Bikaner was compromised and a compromise petition was filed. During the course of



compromise, all the heirs of Ram Lal Golchha, had signed on paper on 02.06.2000 stating and admitting the manner in which joint properties at Bikaner would be partitioned and they also stated therein that the aforementioned Banmankhi, Purnia, property of 20 decimal land, which is also called as Gola, would exclusively belong to the branch of Lunkaran Golchha and proceeds of sale made by Hanumanmal Golchha (second son of Ram Lal Golchha) of other property at Banmankhi would remain with Hanumanmal Golchha. This was duly accepted and admitted by all the brothers and sister of father of the Complainant and in the light of the admitted position the parties had been enjoying their respective properties.

8. But with criminal intention, after ten years of such admitted position, the accused conspired to make illegal gains from the Banmankhi, Purnea, property, which exclusively belonged to the branch of father of the Complainant, and caused illegal loss to him with criminal intention by executing aforesaid sale deed.

9. Father of the Complainant had also written to the Executive Officer of Nagar Panchayat, Banmankhi, Purnia, to mutate his name in the records as the property belonged to him and he was coming in its exclusive possession and in a portion of which he had inducted a tenant, who was residing therein and paying rent to the father of the Complainant. Nagar Panchayat, Banmankhi, Purnea,



mutated the name of father of the Complainant and also collected tax etc. in respect thereof and granted receipts. Tenant, Panna Lal Jain, had also written to the Circle Officer, Banmankhi, Purnea, admitting his tenancy in the said house. Xerox copy of the Will executed by late Ram Lal Golchha during his life time on 17.07.1996, copy of the application for mutation filed by the Complainant's father along with rent receipts granted by Nagar Panchayat and the copy of letter written by tenant Panna Lal Jain to the Circle Officer, Banmankhi, admitting his tenancy in the said house have been filed and annexed as Annexure-A, B, C & D to the Counter Affidavit.

10. The Complainant was examined on Solemn Affirmation. During enquiry, two witnesses have also been examined. Thereafter, the learned Magistrate has passed the impugned order.

11. Reply to Counter Affidavit has been filed on behalf of the petitioners in Cr. Misc. No.26724 of 2013 (purchasers of the land) stating that to the knowledge and information of the petitioners, Will dated 17.07.1996, executed by the grand-father of the Complainant has not been probated. Sale deed was executed after receiving full consideration money. The Power of Attorney holder and six brothers and sisters are sellers of the property and they are none else than the brothers and sisters of father of the Complainant.



12. Supplementary Affidavit has been filed on behalf of the petitioners of Cr. Misc.26724 of 2013 on 18.01.2018 stating that Title Suit No.110 of 2013 filed by the Complainant-Opposite Party No.2 was rejected by the Court below on the ground that executor as legatee cannot claim any right on the basis of unregistered and un-probated Will. Xerox copy of the order dated 11.05.2017 passed in Title Suit No.110 of 2013 has been enclosed as Anenxure-8 to the Supplementary Affidavit.

13. This Court after hearing submission of counsel for both the parties as mentioned above, in detail, comes to the conclusion, that the main question to be determined in this case is whether the petitioners have committed criminal act with intention to cause wrongful loss to the Complainant by illegally executing sale deed dated 11.05.2010 in favour of accused nos.8 and 9 (petitioners of Cr. Misc. No.26724 of 2013) even after having knowledge that in Partition Suit No.47 of 1999, which was decreed on the basis of compromise on 03.07.2010, the property 20 decimals of land at Banmankhi, Purnea, has been given in the share of father of the Complainant by late Ram Lal Golchha, and also the fact that during his life time grandfather of the Complainant (common ancestor of both the parties) had executed a Will on 17.07.1996 stating therein about his family composition and his wish and desire to give 20



decimal of land of Banmannkhi, Purnea, property of Khata no.179, Khesra no.258 (property as mentioned in the Complaint Petition) to Sri Manoj Kumar son of Lunkaran Golchha (full brother of the Complainant) on which Jaskaran Golchha (accused no.5) signed as a witness of Will, but still he executed the sale deed in favour of accused nos.8 and 9 on the basis of Power of Attorney given to him by accused nos.1 to 7, will amount to criminal act or not.

14. The Hon'ble Supreme Court in the case of *Md. Ibrahim Vs. State of Bihar* reported in (2009) 8 SCC 751 has held that Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes.

15. Similarly, in the case of *Indian Oil Corporation Vs. NEPC India Ltd. and ors.* reported in (2006) 6 SCC 736, the Hon'ble Supreme Court has held that remedy under criminal law is not barred, if allegation discloses a criminal offence even if for the act done by the accused persons civil remedy is available in law.

16. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making



a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

17. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

18. In the instant case, the Complainant has clearly alleged that the accused persons had fraudulent intention to cheat and defraud the Complainant by giving Power of Attorney by accused nos.1 to 7 to accused no.5, who executed sale deed in favour of accused nos.8 and 9, with respect to the property, which was allotted to the share of father of the Complainant through compromise in Partition Suit No.47 of 1999 and for which common ancestor late Ram Lal Golchha, who died on 27.10.1997, has executed a Will on



17.07.1996 during his life time stating therein his wish and desire to give aforementioned Banmankhi property of Khata no.179 Khesra no.258 to Sri Manoj Kumar son of Lunkar Golchaa (full brother of the Complainant) on which Jaskaran Golchaa (accused no.5) was one of the witnesses.

19. Therefore, it is apparent from such conduct of the accused persons that they were aware of the fact that the aforesaid property is coming in peaceful possession of father of the Complainant since the date of decree passed on the basis of compromise in Partition Suit No.47 of 1999 dated 03.07.2010. Ram Lal Golchha during his life time on 17.07.1996 has also executed Will with respect of aforesaid property in the name of brother of Complainant. But still the accused persons gave Power of Attorney in favour of Jaskaran Golchha (Opposite Party No.5), who was one of witnesses on the Will in respect of the same property in Banmankhi, Purnea, and he sold the aforesaid property to accused nos.8 and 9.

20. This fact, *prima facie*, proves guilty and dishonest mind of the accused persons and the criminal intention to commit criminal offence to cause wrongful loss to the Complainant.

21. Therefore, this Court does not find any illegality in the impugned order passed by the Court below by which the



learned Court below has found *prima facie* case against the petitioners for the offence under Section(s) 420, 120-B Indian Penal Code and summoned the accused persons to face trial.

22. Therefore, this Court does not find any merit in these applications to interfere with the impugned order in exercise of power under Section 482 Cr. P. C.

23. These applications are, accordingly, **dismissed**.

24. The Court below is directed to proceed with the trial in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	23-01-2018
Uploading Date	11-04-2018
Transmission Date	11-04-2018

