

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.15849 of 2016**

Arising Out of PS.Case No. -2077 Year- 2015 Thana -SARAN COMPLAINT CASE District-  
SARAN

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1. Anil Kumar Ray, son of late Chandradeo Ray, resident of village-Mahrauli,  
P.S.- Doriganj, District - Saran

.... .... Petitioner/s

Versus

1. The State of Bihar  
2. Radhe Krishna Ray, son of late Ganesh Ray, resident of Village - Mahrauli, P.S.  
- Doriganj, District - Saran

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Harsh Singh, Advocate

For the Opposite Party No.1: APP

For the Opposite Party No.2: Mr. B. K. Mishra, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**Date: 18-08-2018**

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 27.11.2015 passed by the Judicial Magistrate, 1<sup>st</sup> class, Chapra, in Enquiry No.196 of 2015 arising out of Complaint Case No.2077 of 2015 by which the learned Magistrate after holding enquiry has found *prima facie* case against the Petitioner and others for the offence under Section(s) 406, 420/34 Indian Penal Code.

Heard learned counsel for the parties.

Petitioner has challenged the order of cognizance mainly on the ground that for the same cause of action Opposite Party No.2 has earlier filed Complaint Case against father of the



Petitioner vide Complaint Case No.502 of 2014 levelling specific allegation that amount of award has been received by the father of this Petitioner after making certain interpolation and submitting wrong document. During pendency of the earlier complaint, father of the Petitioner died. Thereafter, second complaint (instant case) has been filed against the Petitioner and others, who are sons and wife of accused of earlier case, levelling same allegation that money has been illegally received by the Petitioner and others on the basis of illegal act including depositing certain documents, which as per the Complainant were forged.

Main point for consideration in this case before this Court is whether for the same cause of action second complaint filed by the Complainant is maintainable.

Second complaint has been filed by the Opposite Party No.2 being aggrieved on account of receiving the amount of award in a proceeding under Land Acquisition Act by father of the Petitioner. The Solemn Affirmation of the Complainant was recorded in that proceeding from which it appears that the Complainant has participated and raised objection before Land Acquisition Officer and thereafter award was passed in favour of father of Petitioner and money was paid to him. As such, Opposite Party No.2 has civil remedy against the order passed by the Land Acquisition Officer, but



instead of adopting civil remedy, instant criminal case has been filed.

Counsel for the Opposite Party No.2 has submitted that separate complaint can be filed for the same transaction. He has relied on the decision of the Hon'ble Supreme Court in the case of *P. Sreekumar Vs. State of Kerala* reported in *AIR 2018 SC 1482* and *Chirag M. Pathak Vs. Dollyben Kanti Lal* reported in *(2018) 1 SCC 330*. He has also relied on the judgment of our own High Court in the case of *Md. Arshad Vs. State of Bihar* reported in *2017(3) PLJR 78*, wherein, it has been held that at time of holding enquiry learned Magistrate is not required to look into the defence of the accused. All the submissions made on behalf of the Petitioner in this Court are his defence, which cannot be looked into at the time of cognizance.

In reply to the aforesaid submission, learned counsel for the Petitioner has relied on decision of our own High Court in the case of *Bharat Kishore Narayan Sarsawati Vs. State of Bihar* reported in *2011 (1) PLJR 755* and submitted that High Court while exercising its inherent jurisdiction under Section 482 Cr.P.C. is permitted to look into unimpeachable documents of the accused to prevent abuse of process of Court.

From the complaint, it appears that the Complainant has alleged that certain lands were acquired for converting NH 19 into four lanes. Award was prepared. The house of Complainant and his



two brothers were situated over the aforesaid land having equal share. The aforesaid land and house were acquired under land acquisition proceeding. Registered sale deed dated 07.09.1981 is in the name of the Complainant and his two brothers. Receipt was also issued in the name of Complainant and his two brothers as co-sharers. Award with respect to the house was prepared for the sum of Rs.4,02,181/-. It is alleged that the accused persons along with deceased father by forging signature of the Complainant and his brother, Krishna Bihari Ray, on the affidavit and in conspiracy with each other received amount of Rs.4,02,181/- from the Land Acquisition Office of their share and that of share of other two brothers. The share of the Complainant in aforesaid award has been received by the accused persons by submitting forged affidavit. The Petitioner has misappropriated 1/3<sup>rd</sup> share of the Complainant in the aforesaid award.

It is admitted position that for the same cause of action Opposite Party No.2 has earlier filed a case against the father of this Petitioner vide Complaint Case No.502 of 2014 on 19.02.2014. In that complaint, not even a whisper was made against this Petitioner of committing any fraudulent act or having acted as conspirator with his father in receiving the amount. It appears that during pendency of the aforesaid complaint case, father of the Petitioner has died.



Petitioner has enclosed Solemn Affirmation of the Complainant recorded in Complaint Case No.502 of 2014 as well as statement of other witnesses recorded as Annexure-3 and 4. The Complainant in Solemn Affirmation and the witnesses in their statement have nowhere whispered anything against the Petitioner during the enquiry held by the Magistrate in the earlier Complaint Case No.502 of 2014. It appears that after death of father of this Petitioner, who was sole accused in Complaint Case No.502 of 2014, instant complaint has been filed levelling allegation against this Petitioner that he in connivance with his father has received the amount of compensation from the Land Acquisition Office.

Counsel for the Petitioner has submitted that in the instant case the Complainant in his Solemn Affirmation has admitted that he raised objection in the office of Land Acquisition Officer, but still payment was made to the father of Petitioner.

This Court is of the view that for the same cause of action when earlier case has been filed levelling specific allegation against the father of the Petitioner and there was no whisper against this Petitioner, who is son of the accused in earlier Complaint Case No.502 of 2014, filing of the instant case subsequent to death of accused in earlier case leveling allegation that he in conspiracy with his father has received the amount is not permissible in law. The



Complainant cannot be allowed to file as many complaint as he desires and implicate as many accused as he wants by filing different cases. The Complainant (Opposite Party No.2) had ample opportunity to include all the accused persons whom he thought as conspirators in taking award money in the very first complaint itself. In the first complaint, there was no whisper against the Petitioner of committing any overt act.

The Hon'ble Supreme Court in the judgment reported in **(2018) 1 SCC 330** in the case of **Chirag M. Pathak Vs. Dollyben Kantilal Patel** has held that “*when on reading the FIRs, a sheer absurdity in allegations is noticed and when no prima facie cognizable case is made out on its mere reading due to absurdity in allegations or when facts disclose prima facie cognizable case and also disclose remarkable identity between two FIRs, as if the first FIR was filed second time with no change in allegations, then the Court may, in appropriate case, consider it proper to quash the second FIR*”.

Therefore, filing of the instant second complaint against the Petitioner after death of his father for the same cause of action is not permissible in law.

In view of such, impugned order dated 27.11.2015 passed by the Judicial Magistrate, 1<sup>st</sup> class, Chapra, in Enquiry



No.196 of 2015 arising out of Complaint Case No.2077 of 2015 along with entire criminal proceeding against the Petitioner is hereby quashed.

This application is, accordingly, **allowed**.

**(Sanjay Priya, J)**

*J.Alam/-*

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| AFR/NAFR          | <b>AFR</b>        |
| CAV DATE          | <b>N/A</b>        |
| Uploading Date    | <b>01-09-2018</b> |
| Transmission Date | <b>01-09-2018</b> |

