

# IN THE HIGH COURT OF JUDICATURE AT PATNA

## Criminal Miscellaneous No.19027 of 2016

Arising Out of PS.Case No. -74 Year- 2010 Thana -PHULWARIA District- GOPALGANJ

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1. Girindra Nath Mishra, son of late Kamla Kant Mishra,
  2. Brajesh Kumar Mishra, son of Girindra Nath Mishra,
  3. Praveen Kumar Mishra, son of Girindra Nath Mishra, all resident of village- Birsia Bathua, P.S.-Phulwaria, District- Gopalganj, presently residing at MIG-28 & 29, Muhalla- Netaji Subhash Chandra Bosh Nagar, PO & P.S.-Gorakhnath, District-Gorakhpur, Uttar Pradesh,
  4. Mahmood Miyan, son of Hakim Miyan, resident of village- Birsia Bathua, P.S.- Phulwaria, District-Gopalganj, presently residing at Bathua Bazar, P.S.- Phulwaria, District- Gopalganj.

.... .... Petitioner/s

Versus

1. The State of Bihar &
2. Shambhu Nath Mishra, son of late Nagendra Nath Mishra, resident of village- Birsia Bathua, P.S.-Phulwaria, Distinct- Gopalganj

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

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### Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Sr. Advocate  
Mr. Sanjay Kumar Pandey No.5, Advocate  
Ms. Anita Kumari, Advocate  
For the Opposite Party No.1: Mr. Jharkhandi Upadhyay, APP  
For the Opposite Party No.2: Mr. Brij Bihari Tiwary, Advocate

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

CAV JUDGMENT

**Date: 05-10-2018**

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 14.3.2016 passed by the Additional Chief Judicial Magistrate, V, Gopalganj, in Phulwaria P.S. Case No.74 of 2010 by which the learned Magistrate has taken cognizance against the Petitioners for the offence under Section(s) 467, 468, 471, 120-B Indian Penal Code.



2. The present case arises out of the complaint filed by the Opposite Party No.2 alleging therein that Petitioners created false Deed of Gift dated 22.11.1959 in the name of father of Informant and thereafter making it public in spite of knowing that aforesaid Deed of Gift is forged. It is further alleged in the complaint that Deed of Gift dated 22.11.1959 was never registered and Mutation Case No.285/05-06 was not filed by the Opposite Party No.2 on the basis of aforesaid Deed of Gift, rather, mutation was applied on the basis of Photostat copy of Deed No.1405 dated 24.03.1960. Original copy of Deed was lost somewhere in journey. The Petitioners have created Deed dated 22.11.1959 and applied for mutation in favour of the Informant (Opposite Party No.2) with respect to land, in question, to harass and injure the Informant (Opposite Party No.2).

3. Aforesaid complaint was sent to P.S. under Section 156(3) Cr.P.C. on the basis of which Phulwaria P.S. Case No.74 of 2010 was registered. The police after investigation submitted Final Form in the case stating that the case relates to land dispute. The Court below after differing with the Final Form submitted by the police took cognizance against the Petitioners by the impugned order under Section(s) 467, 468, 471, 120-B Indian Penal Code.



4. Counsel for the Petitioners submits that Opposite Party No.2 is nephew of Petitioner No.1, who was looking after landed property of Petitioner No.1. He has siphoned off 5 Bighas and 7 Katthas of land of Petitioner Nos.1 to 3 through Mutation Case No.285/05-06 in Phulwaria Block, Gopalganj. The Petitioners are themselves victims of Opposite Party No.2. During course of investigation, it has come that entire proceeding of Mutation Case No.285 of 2005-06 was written in the handwriting of one Awadh Kishore Ojha, who is father-in-law of the Opposite Party No.2 and was a Revenue *Karamchari* in Phulwaria Block at that time. It was found after detailed enquiry that no such Deed of Gift No.4060 dated 22.11.1959 was ever presented before the Circle Officer for pursuing Mutation Case and the said Deed of Gift was not in existence.

5. All the accused persons including Opposite Party No.2, who were involved in illegally passing order in Mutation Case No.285/05-06 on the basis of such non-existent Deed of Gift dated 22.11.1959, were charge-sheeted in criminal case filed against them vide Phulwaria P.S. Case No.72 of 2010 as well as Chapra Town P.S. Case No.219 of 2012.

6. Shambhu Nath Mishra (Opposite Party No.2) has created false mutation proceeding in Mutation Case No.285 of 2005-06 on the basis of non-existent Deed of Gift No.4060 dated



22.11.1959 (Ram Lagan Mishra, grand father of Petitioner No.1 Vs. Nagendra Nath Mishra, father of Opposite Party No.2) and siphoned of 5 Bighas and 7 Katthas of land of Petitioner Nos.1 to 3. In the case diary of Phulwaria P.S. Case No.72 of 2010, the Circle Officer, Phulwaria, has stated that Deed of Gift dated 22.11.1959 was not produced before him and all these acts were done by the father-in-law of the Opposite Party No.2, Awadh Kishore Ojha, who was a Revenue Karamchari. The Investigating Officer has examined the veracity of Deed No.4060 dated 22.11.1959 from the Record Room, Chapra, and recorded in para 87 of the case diary that Deed Number and Deed date does not tally with each other and the executor and executrix are different. The Petitioner No.1 came to know about the loss of his landed property of more than 5 Bighas and then he started representing the authorities like District Magistrate, Gopalganj, and the Sub-Registrar, Mirganj, and Chapra. When the authorities came into action, the District Magistrate, Gopalganj, ordered for an enquiry to the DCLR. Thereafter, the present Opposite Party No.2 has filed false case against the Petitioners vide Phulwaria P.S. Case No.36 of 2010 with allegation that Petitioner No.1 has taken Rs.22 Lakh for execution of Sale Deed in favour of the Opposite Party No.2 and that case was found to be false by the police.

7. The Petitioner No.2 after coming to know that



Opposite Party No.2 with the help of his brother and his father-in-law, Awadh Kishore Ojha, has committed fraud and misappropriated more than 5 Bighas of ancestral property of Petitioner Nos.1 to 3, he filed Complaint Case No.1584 of 2010 against the Opposite Party No.2, his brother and father-in-law-Awadh Kishore Ojha. Aforesaid complaint was sent to P.S. under Section 156(3) Cr.P.C. on the basis of which Phulwaria P.S. Case No.72 of 2010 was instituted. The police after proper investigation and obtaining sanction for prosecution by the District Magistrate, Gopalganj, submitted charge-sheet against Opposite Party No.2, Shambhu Nath Mishra, his brothers, namely, Omkar Nath Mishra and Murlidhar Mishra and his father-in-law, Awadh Kishore Ojha, vide Charge-Sheet No.15 of 2015 dated 31.01.2015. Xerox copy of First Information Report of Phulwaria P.S. Case No.72 of 2010 and Charge-Sheet No.15 of 2015 are annexed as Annexure-6 and 7.

8. It is further alleged that Petitioners took serious step to save their properties, which was misappropriated by Opposite Party No.2, with the help of non-existing Deed dated 22.11.1959 and concocted Mutation Case No.285/05-06, then Opposite Party No.2 came out with a fresh concocted Deed of Gift i.e. Deed No.1405 dated 24.03.1960 (Ram Lagan Mishra Vs. Nagendra Nath Mishra), and filed Title Suit No.320 of 2009 for the same property. The



Opposite Party No.2 has prayed for partition of ancestral properties of Petitioner Nos.1 to 3 and Opposite Party No.2 on the basis of Deed of Gift No.1405 dated 24.03.1960.

**9.** The Petitioners, again, raised objection against the second and concocted Deed of Gift No.1405 dated 24.03.1960 on the ground that it cannot be executed in the circumstances when Ram Lagan Mishra was admitted on 27.02.1960 in *Kashi Labh Mukti Bhawan*, Varansi, and, untimely, he died on 25.03.1960 in Varanasi itself. Certificate issued from *Kashi Labh Mukti Bhawan* and the Death Certificate issued by Municipal Corporation, Varanasi are annexed as Anenxure-9 and 10.

**10.** Opposite Party No.2 has fraudulently adduced a false Death Certificate of the year 1961 of late Ram Lagan Mishra issued by the District Statistical Office, Chapra, which was disowned by the District Statistical Officer, Saran, Chapra, through Letter No.996 dated 15.12.2012.

**11.** It is further submitted that on the representations given by the Petitioners and initiations taken by the District Magistrate, Gopalganj, the DCLR, Hathua, conducted a detailed inquiry and submitted his report stating that Deed No.4060 dated 22.11.1959 as well as Mutation Case No.285/05-06 are forged. The District Sub-Registrar, Chapra, also examined the matter and



reported that Deed No.1405 dated 24.03.1960 is a manufactured document. The District Magistrate, Saran, has also conducted a detailed inquiry into the affairs of the Record Room of the Registration Office, Chapra, and issued Memo No.41/C dated 14.01.2012 for taking appropriate action in the matter. Thereafter, Department of Vigilance has endorsed Memo No.41/C dated 14.01.2012 and forwarded it to the Inspector General, Economic Offences Cell, for taking appropriate action. Thereafter, Chapra Town P.S. Case No.219 of 2012 was registered against Opposite Party No.2 and other accused persons on the basis of written report of Shri Vinay Kumar, IAS, District Magistrate, Saran. Chapra Town P.S. Case No.219 of 2012 was investigated and charge-sheet was submitted against all the accused persons. The learned Magistrate also took cognizance against Opposite Party No.2 for the offence under Section(s) 420, 467, 468, 471, 472, 120-B/34 Indian Penal Code by order dated 16.05.2013/17.05.2013.

**12.** Opposite Party No.2 has filed Phulwaria P.S. Case No.74 of 2010 dated 21.07.2010 in retaliation to the efforts made by the Petitioner Nos.1 and 2 to expose the illegalities committed by Opposite Party No.2 by which he has misappropriated more than 5 Bighas of ancestral land of Petitioner Nos.1 to 3. Counsel for the Petitioners further submits that Phulwaria P.S. Case



No.74 of 2010 is malicious prosecution and the same was filed for taking vengeance from the Petitioners. The police has rightly submitted Final Form No.85 of 2014 holding the case as land dispute. The learned Magistrate without applying judicial mind has taken cognizance against the Petitioners.

**13.** Counsel for the Opposite Party No.2 submits that defence of the accused (Petitioners) cannot be taken into consideration by the Magistrate at the time of taking cognizance. The learned Magistrate on the basis of allegation made in the Complaint Petition and material available in Case Diary has taken cognizance against the Petitioners after differing with Final Form submitted by the police.

**14.** Having heard counsel for both the parties, this Court finds that main allegation in the Complaint Petition against the Petitioners is of making Deed of Gift dated 22.11.1959 in the name of father of Opposite Party No.2 public, which was not in existence, to cause loss to Opposite Party No.2. The Complainant has alleged that Deed No.4060 dated 22.11.1959 was never registered and Mutation Case No.285/05-06 was not applied by the Opposite Party No.2 on the basis of the aforesaid Deed of Gift, rather, the same was applied on the basis of Photostat copy of Deed No.1405 dated 24.03.1960.



**15.** Counsel for the Petitioners has further submitted that Mutation Case No.285/05-06 was found to be fraud by the DCLR, Hathua, Gopalganj, by his report dated 20.03.2010 (Annexure-12). The District Sub-Registrar, Chapra, vide his report dated 09.01.2012, has found Deed No.1405 dated 24.03.1960 as manufactured document (Annexure-13). Ultimately, Chapra Town P.S. Case No.219 of 2012 was registered against the Opposite Party No.2 and other accused persons on the basis of written report of Sri Vinay Kumar, IAS, District Magistrate, Saran, which was investigated by the police and charge-sheet was submitted. Cognizance has been taken against Opposite Party No.2 and his other family members by order dated 16.05.2013/17.05.2013 (Annexure-15 & 16). Petitioner No.2 has also filed earlier Complaint Case No.15840 of 2010, which was sent to Phulwaria P.S. on the basis of which Phulwaria P.S. Case No.72 of 2010 was registered against the Opposite Party No.2 and his family members for committing fraud and misappropriation of more than 5 Bighas of ancestral land of Petitioner Nos.1 to 3. The police after obtaining sanction for prosecution has filed charge-sheet against Opposite Party No.2, his brothers and other family members on 31.01.2015. Instant case has been filed by Opposite Party No.2 in retaliation of the efforts made by the Petitioner No.1 and others to expose the



alleged illegalities committed by Opposite Party No.2 by which he has misappropriated more than 5 Bighas of land of Petitioner Nos.1 to 3.

**16.** The Hon'ble Supreme Court in the case of *Inder Mohan Goswami Vs. State of Uttaranchal* reported in (2007)12 SCC 1 has held that in the dispute of civil nature even if all the averments made in the FIR are taken to be correct, the case for criminal prosecution is not made out against the accused persons. To prevent abuse of process and to secure ends of justice, it becomes imperative to quash the FIR and any further proceedings emanating therefrom.

**17.** The Hon'ble Supreme Court has further held in the aforesaid judgment that while exercising power under Section 482 Cr.P.C. the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused.

**18.** The Hon'ble Supreme Court in the case of *State of Haryana Vs. Ch. Bhajan Lal* reported in AIR 1992 SC 604 has held that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused with a view to spite him due to private and personal grudge, criminal



prosecution is liable to be quashed.

**19.** In the instant case, from plain reading of allegation in the Complaint Petition and in the facts and circumstances of the case, as discussed above, this Court finds that no ingredients of any criminal offence is made out in this case on the basis of allegation made in the Complaint Petition and material available in the case diary.

**20.** In view of such, impugned order dated 14.3.2016 passed by the Additional Chief Judicial Magistrate, V, Gopalganj, in Phulwaria P.S. Case No.74 of 2010 along with entire criminal proceeding against the Petitioners is hereby quashed.

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

**(Sanjay Priya, J)**

*J.Alam/-*

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