

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.295 of 2016

Arising Out of PS. Case No.-278 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

-
1. Lakhan Prasad son of late Dhina Mahto
 2. Sanjay Kumar
 3. Bijay Kumar

Nos 2 and 3 are sons of Lakhan Prasad All residents of village Mokamaghat, P.S. Mokama, District Patna at present resident Mokama Rangu Lal Tola, Ward No. 14, P.S. Mokama, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Mahesh Prasad Singh son of Ragho Singh resident of village Moldiartola, Pathak ghat, P.S. Mokama, Ward No. 13, District Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sushil Kumar Jha
For the Opposite Party/s : Mr. Ram Sumiran Rai(App)

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL ORDER

3 14-08-2018 This petition has been filed for quashing the order dated 22.5.2015 passed by learned Judicial Magistrate, 1st Class in Complaint case no. 278 (C) of 2013 by which the learned Magistrate has taken cognizance for the offence under Sections 417 and 465/34 of the I.P.C. against the petitioners.

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the complainant.

It is alleged in the complaint petition that complainant purchased the land as mentioned in the complaint petition on 26.12.1990 through four registered sale deeds and came in possession over the same. Jamabandi was also created in the



name of the complainant. The Circle Office has also issued land possession certificate in the name of the complainant. It is alleged that petitioners started claiming title over the property being descendant of late Saryug Singh. Thereafter, the complainant filed Eviction Suit against the petitioner on 15.1.2013.

The main allegation made against the petitioners is that in order to substantiate their title they have prepared fabricated papers and also revenue receipt in connivance of co accused Bijay Sharma in the name of Umesh Kumar son of Saryug Singh. A fake receipt was also issued. It is also alleged that accused Bijay Sharma under the connivance of the petitioners and Umesh Kumar removed the name of the complainant and in his place the name of accused Umesh Kumar was entered. It is alleged that cutting has been made in the Holding Book and other assessment register of the Nagar Parishad and fabricated document has been created. Accused Bijay Sharma has issued rent receipt no. 4032 in respect of Holding no. 163 in the name of the complainant. But, later on, documents have been fabricated at the instance of Bijay Sharma in order to extend benefits to the accused nos. 1 to 4. It is also alleged that accused persons under a conspiracy got



electric connection in the name of accused Umesh Kumar on 13.1.2011 showing himself to be the owner of the house and has also sworn affidavit as Umesh Kumar son of late Saryug Singh. It is also alleged that said Umesh Kumar has fabricated documents and produced a false document for obtaining electric connection. It is further alleged that complainant obtained those documents under RTI Act and took steps for disconnection of the electricity connection and for legal action whereupon the Electrical Assistant Engineer sent the said receipt no. 415 dated 12.4.2003 to the Nagar Parishad for its verification whereupon the Nagar Parishad reported that the said receipt is fake one. It is also alleged in the complaint that complainant sent complaint to Electrical Assistant Engineer and the Electrical Assistant Engineer referred the matter to the Junior Electrical Engineer, Mokama who reported that the allegations are true and thereafter electric connection of the said premises of Umesh Kumar was disconnected

The learned Court below, on the basis of the aforesaid complaint after holding enquiry and recording SA. of the complainant and statement of other witnesses during enquiry found *prima facie* case for the offence under Section 417, 465/34 of the IPC.



Learned counsel for the petitioners has mainly argued that it is a matter of civil dispute as Eviction suit has already been filed by the complainant on 15.1.2013.

Learned counsel for the State, on the other hand, has submitted that just to establish their title the petitioners have fabricated various documents. They have also applied for electric connection on the strength of such document which, on enquiry, was found to be forged and fabricated document. Thereafter the electric connection which has been given to the petitioners by the electricity Department was disconnected. The trial Court is only required to see *prima facie* case at the time of holding enquiry.

This Court, after looking into the allegation in the complaint petition finds that there is mens rea and no illegality has been committed by the learned Court below in finding *prima facie* case for the offence under Sections 417 and 465/34 of the IPC against the petitioners after holding enquiry under Section 202 Cr. P.C..

Therefore, this Cr. Misc. petition is dismissed.

(Sanjay Priya, J)

shyambihari/-

U		T	
---	--	---	--

