

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46949 of 2014

Arising Out of PS. Case No.-2396 Year-2013 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

1. Md. Faiyaz Khan @ Md. Faiyaz S/o Md. Israil Khan Resident of
Islam Nagar, Bhikhanpur, P.S. Ishakchak, Bhagalpur.
2. Md. Imtiyaz S/o Md. Salim Siddique Resident of Dumrao,
Dyodhi Bazar, P.S. Dumrao, District Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Md. Israil Khan S/o Late Md. Hadis Khan Resident of Islam Nagar,
Bhikhanpur, P.S. Ishakchak, Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv
For the Opposite Party/s : Mr. MD. A.HAQUE SAHARA(APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 17-01-2018

Heard learned counsel for the parties.

This petition under Section 482 of the Cr.P.C has been
filed for quashing the order dated 01.07.2014, passed by Judicial



Magistrate, 1st Class, Bhagalpur in Complaint Case No. 2396 of 2013 by which cognizance under Sections 418, 465, 468 and 474 of the Indian Penal Code, has been taken against the petitioners.

Notices were issued to Opposite Party No. 2 but the process server has reported that Opposite Party No. 2 is dead and as such the State was heard in opposition to this petition. A complaint case was filed by Opposite Party No. 2 that petitioner nos. 1 and 2 are son and grandson of Opposite Party No. 2 and are governed by Mohammedan Law. It has been alleged that petitioner no. 1 had manufactured documents of title to the property belonging to Opposite Party No. 2, and it has been further alleged that Opposite Party No. 2 had purchased during his lifetime the landed properties out of his income, in the name of his wife and his wife had no source of income and she died on 06.07.2004 at Kolkata. It has been further stated that his late wife had never gifted property to any member of his family and petitioner no. 1 has been claiming share in the landed property on the basis of oral gift made by his late wife and mother of petitioner no. 1. The complainant-Opposite Party No. 2 could know about such oral gift (Hibba) when petitioner no. 1 applied for mutation before the Circle Officer, Jagdishpur, on the basis



of oral gift from his mother and as such his claim is false and baseless, and in collusion of the authorities petitioner no. 1 got land mutated in his name and rent receipts were also issued. He challenged the order of mutation dated 13.04.2004 before the DCLR, Bhagalpur and his appeal was allowed by the DCLR. It has been stated on behalf of petitioners that his mother made an oral gift in favour of both her son petitioner no. 1, and her husband complainant-Opposite Party No. 2 and he had also applied for mutation of his share and the same was mutated during lifetime of his mother and mutation was done and no objection was raised by Opposite Party No. 2-complainant at that point of time. The Opposite Party No. 2-complainant sold his share in the gifted property, which was mutated in his name in 2003-04. Title Suit no. 210 of 2010 for the gifted properties regarding title and possession over the gifted land is pending before the Civil Court, Bhagalpur, as such the dispute is of civil nature and no criminal offence is made out.

From perusal of the contents of the complaint petition and dispute between the parties, it is out and out a civil dispute and no criminal offence is made out. The dispute of oral gift by mother of petitioners to her son and husband is a dispute of civil nature, as such the order taking cognizance against the



petitioners is not sustainable as no criminal offence is made out. No ingredients in order to constitute offence under Sections 418, 465, 468 and 474 of the IPC is made out. Oral gift (Hibba) was made on 29.11.2003, by mother of petitioner and wife of Opposite Party No. 2 and both parties came in possession over their gifted properties in the life time of donor and also got lands mutated in their name as such after more than 10 years, no criminal offence is made out that properties were fraudulently obtained by cheating and forgery and manufacture of false documents. The Apex Court while dealing with oral gift (Hibba) in the case of ***Khalid Khan vs State of U.P. and Ors*** reported in ***2015(15) SCC 679***, has stated that in such circumstance no criminal offence is made out and quashed the criminal proceeding. Paras 2 and 4 of the said judgment are relevant and quoted hereinbelow:-

"2. We have heard the learned Counsel for the parties at length and upon hearing them, we find that a Suit and a First Appeal are pending on the subject matter of the present litigation and the issue with regard to ownership of the land in question is yet to be finalised in the said Suit and in the First Appeal.

4. Suffice it to say at this stage that while rejecting the applications filed Under Section 482 Code of Criminal Procedure, the High Court had considered certain facts which prima facie might not be correct. Some observations with regard to the oral gift (Hiba) have been made which, according to us, are not correct, as we do not find



the same in the sale deed which had been executed in favour of the present Appellants."

After considering the facts and circumstances of the case, it appears that the dispute between the parties are of civil nature and no criminal offence is made out, as such the order taking cognizance dated 01.07.2014 is quashed.

Petition is allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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