

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48933 of 2012

Arising Out of PS.Case No. -null Year- null Thana -null District- -

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1. Birendra Kumar Jaiswal S/O Late Motilal Jaiswal Resident Of Mohalla-Mithapur, P.S.- Jakkanpur, District- Patna And Premanent Resident Of Mohalla-Marwari Bazar, P.O.+P.S.- Samastipur, District- Samastipur

2. Surendra Kumar Jaiswal S/O Late Motilal Jaiswal Resident Of Mohalla-Mithapur, P.S.- Jakkanpur, District- Patna And Premanent Resident Of Mohalla-Marwari Bazar, P.O.+P.S.- Samastipur, District- Samastipur

.... Petitioner/s

Versus

1. The State Of Bihar

2. Manoj Kumar Jaiswal S/O Late Dharmendar Kumar Jaiswal Resident Of Mohalla- Marwari Bazar, P.S. And P.S.- Samastipur, At Present Resident Of Mohalla- Mithapur, P.S.- Jakkanpur, District- Patna

.... Opposite Party/s

with

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Criminal Miscellaneous No. 17031 of 2010

Arising Out of Complaint Case No. -0 Year- null Thana -null District- PATNA

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1. Ravindar Kumar Jaiswal S/O Late Motilal Jaiswal Presently Residing At Moh.-Mithapur,P.S.-Jakkanpur,Dist.-Patna And Permanent R/O Moh.Marwari Bazar,P.O. & P.S.-Samastipur,Dist.-Samastipur.

.... Petitioner/s

Versus

1. The State Of Bihar

2. Manoj Kumar Jaiswal S/O Late Dharmendra Kumar Jaiswal Permanent R/O Moh.-Marwari Bazar,P.O. & P.S.-Samastipur,Dist.-Samastipur And Presently Residing At Moh.-Mithapur,P.S.-Jakkanpur,Dist.-Patna.

.... Opposite Party/s

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Appearance :

(In both cases)

For the Petitioner/s : Mr. Ashok Kumar Choudhary, Adv.
Mr. Anil Kumar Tiwary, Adv.
Mr. Akshansh Ankit, Adv.

For the State : Mr. Nagendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 16-01-2018



Heard learned counsel for the petitioners and the State.

Both these petitions have been filed for quashing the order dated 12-12-2007 passed by Sri R. Kumar Tripathi, learned Judicial Magistrate-Ist Class, Patna in Complaint Case No. 3075C of 2007 whereunder and whereby, the learned Magistrate has found prima facie case against the petitioners for offence under Sections-467 & 423 of the Indian Penal Code and accordingly, they are being heard and disposed off by this common order.

Notice has been issued in both the cases to opposite party No. 2 which has validly been served but none appeared today during course of hearing of these petitions. Counsel for the State is present.

Supplementary affidavit has been filed in Cr. Misc. No. 48933 of 2012 stating therein that accused No. 1 Birendra Kumar Jaiswal has died on 10-09-2014 in support of which, death certificate (Annexure-4) has been filed.

Counsel for petitioners has submitted that from the averment made in paragraphs-4 & 5 of the complaint, no offence is made out against these petitioners. The complainant has alleged that accused persons have sold their shares of the suit property to different persons.

Counsel for petitioners has submitted that it is an admitted position that complainant and these petitioners are co-sharers. The complainant has mentioned in para-1 of the complaint that accused persons are uncle of the complainant.

In the complaint petition, it is alleged that Title Partition Suit



No. 216 of 1991 was filed by Rabindra Kumar Jaiswal for partition of the shares in the joint family property and by order dated 03-07-1993 passed by Sub Judge-12, Patna, a preliminary decree was passed in respect of the suit property, in which, share of the plaintiff along with the defendants including the father of the complainant (since dead) were defined to the extent of $1/6^{\text{th}} + 1/9^{\text{th}}$ to each and every party to the suit. Copy of the preliminary decree has been enclosed with the complaint petition.

It is further alleged in the complaint that except defining the shares to the above extent to each of the parties of the above suit, no partition has been effected in metes and bounds nor the shares have been demarcated and the case is still pending for final decree before the court concerned. The complainant has alleged in paras-4 & 5 of the complaint that in the meanwhile, accused Birendra Kumar Jaiswal, by virtue of the sale deed dated 11-04-2007 have sold their entire shares in the suit property to Ratan Kumar Jaiswal. The accused Ravindra Kumar Jaiswal has also executed a deed of agreement of sale with one Rajesh Kumar in respect of his own entire share in the suit property vide an Agreement dated 22-05-2005.

The complainant has further alleged that whatever shares have been allotted under the preliminary decree in favour of all three accused persons in the property in question, have already been disposed off finally by the above two accused persons and so far as the share of Ravindra Kumar Jaiswal is concerned, the same also has been under the agreement for sale. The complainant has alleged that in this manner, all



these petitioners acted in conspiracy with each other and prompted by fraudulent and dishonest intentions stealthily and secretly executed a sale deed in respect of the share which was earmarked under the preliminary decree in favour of the complainant's father vide a sale deed dated 13-09-2007 to one Smt. Sunita Gupta wife of Sri Vijay Prasad of Mithapur, Patna. The above sale deed was executed conjointly by all the three petitioners in which statements have been made by the accused persons to the effect that the portion of the lands under sale vide the above sale deed has been coming under their exclusive joint possession by means of a "Khangri Batwara" in between the co-owners of the land and as being the full owners and in exclusive possession of the same they have right to sell the said portion of the land to the vendee and those accused persons have obtained a sum of Rs. 3,80,000/- as the price of the aforesaid land.

The complainant has further alleged that the accused persons after disposing of their respective shares in the suit property as defined under preliminary decree by learned Sub Judge-12, Patna had no remaining share of interest in respect of the suit property any more and as such, they have acted dishonestly to obtain a wrongful gain and cause wrongful loss to the real owners of the property and have misappropriated the value of the land in an unauthorized manner.

Counsel for the petitioners has submitted that even allegation as levelled in the complaint be accepted, then the civil remedy is available to the petitioners for their grievance. It has further been submitted that final decree is yet to be prepared and in the proceeding of final decree, the



complainant has opportunity to raise all such issues in accordance with law.

Counsel for the petitioners has relied upon a decision reported in *(2009) 7 SCC 495 (Devendra and Others Vs. State of Uttar Pradesh and Another.)* The Hon'ble Court has held in aforesaid judgment that exercise of jurisdiction u/S 482 Cr. P.C. is justified where dispute is purely of civil nature. Initiation of criminal proceeding under Sections-420, 467, 468 and 469 of the Indian Penal Code in such a case was not justified.

From the impugned order, this court finds that the court below has after holding inquiry, found prima facie case for the offence under Sections-467, 423 of the Indian Penal Code. From the averments made in the complaint petition itself, it appears that there has been no any allegation by the complainant that any dishonest and fraudulent act was done by the petitioners and any false documents were prepared by the petitioners. Similarly, this court finds that there is no any specific allegation in the complaint petition by the complainant that any forgery of valuable security or a will etc. was done by the petitioners. It is admitted position in complaint petition that complainant and these petitioners are co-sharers.

Therefore, this court finds that none of the ingredients of offence under Sections-423, 467 of the Indian Penal Code is applicable in the case. Learned Magistrate has in mechanical manner on the basis of statement of witnesses found prima facie case under Sections-423, 467 of the Indian Penal Code.



Accordingly, the impugned order dated 12-12-2007 passed by Sri R. Kumar Tripathi, learned Judicial Magistrate-Ist Class, Patna in Complaint Case No. 3075C of 2007 along with entire criminal proceeding with respect to the petitioners is quashed.

Both these Cr. Misc. Applications are allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25-01-2018
Transmission Date	25-01-2018

