

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1953 of 2016

Arising Out of PS.Case No. -334 Year- 2015 Thana -BARH District- PATNA

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1. Upendra Prasad Singh Son of Late Laxmi Narayan Singh
2. Suraj Kumar @ Rinku Singh
3. Niraj Kumar @ Bablu Singh
4. Dhiraj Kumar @ Pappu Singh All 2 to 4 are sons of Upendra Prasad Singh. All resident of village- East Malahi, P.S.- Barh, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Subodh Kumar Singh son of Late Kameshwar Singh, resident of village + P.O.- Raja Bigha, P.S.- Barh, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No-2

For the Opposite Party/s : Mr. Pushpa Sinha (App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 27-09-2018

Heard learned counsel for the petitioners as well as
learned counsel for the O.P. No. 2 along with learned Additional
Public Prosecutor.

Petitioner has asked for quashing of the prosecution
arising out of Barh P.S Case No. 334 of 2015 corresponding to
G.R. No. 1422 of 2015 registered for offences punishable under
Sections 420, 467, 468 and 34 of the Indian Penal Code pending in
the court of Additional Chief Judicial Magistrate, Barh, Patna.

O.P. No.2/informant has filed written report on



11.08.2015 discloses the fact that he has purchased the land bearing Khata No. 32, Khesara No. 69, Khata No. 32, 80 Khesara No. 242, 239, Khata No. 41, Khesara No. 42 and Khata No. 80 Khesara No. 18 from Kamakhya Narayan Singh, son of Late Binda Prasad Singh of Village Hemanpur, P.S.- Mohiuddin Nagar, Distt. Samastipur, vide sale deed dated 30.01.2015. When he approached before Circle Officer, Barh for mutation on 06.04.2015, Upendra Prasad Singh son of Late Laxmi Narayan Singh and his sons, namely, Bablu, Pappu and Rinku indulged in an altercation and further, on the basis of forged documents having in favour of Upendra Prasad Singh of the year 1995 and 2006, they have objected his prayer before the Circle Officer. After some time, they began to threat him over possession. He has further submitted that times without number he has approached the police station but could not succeed in lodging of the case at an earlier occasion.

It has been submitted at the end of the petitioners that petitioner no. 1 Upendra Prasad Singh is the bona-fide purchaser of the land in dispute since long. The informant/O.P. No. 2 has manufactured a forged and fabricated document and on the basis thereof, he is trying to interfere with the peaceful possession of the petitioners whereupon resisted, got this case



filed alleging false and frivolous allegation. It has also been submitted that parties are contesting the proceeding under Section 144 Cr.P.C. Apart from this, it has also been submitted that the document in question having in favour of the petitioners is earlier than the so alleged document in favour of O.P. No. 2/informant and in accordance with the T.P. Act earlier purchaser has got privilege over the subsequent purchaser in getting possession over the land. Instead of making grievances before the land holder, O.P. no. 2/informant is adamant to axe upon the legal rights of the petitioners illegally. Furthermore, it has also been submitted that has there been a legal right in favour of the O.P. No. 2/informant that can be only by way of a declaration of sale deed having in favour of petitioners null and void and for that O.P. No. 2/informant ought to have instituted a civil suit. Criminal Court has no power to declare a sale deed forged and fabricated much less, he is not an aggrieved party at all. That being so, it happens to be a malicious prosecution whereupon, is fit to be quashed.

The learned Additional Public Prosecutor as well as learned counsel representing the O.P. No. 2 has submitted that for the present, the proceeding cannot be quashed because of the fact that from a plain reading of the written report, a prima facie case is found duly exposed.



The Hon’ble Apex Court in **State of Tamil Nadu Vs. S. Martin & Ors** reported in (2018)5 SCC 718 has held that there should not be quashing during the course of investigation of a case as the same tantamounts to pre-assessment before conclusion. From the case diary it is evident that matter is still under investigation and that being so, for the present, the prayer of the petitioner is found pre-mature and is accordingly, dismissed.

However, it is made clear, that petitioners if so advised, may take proper legal recourse.

(Aditya Kumar Trivedi, J)

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