

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14495 of 2015

Arising Out of PS.Case No. -757 Year- 2005 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. PRAMOD KUMAR YADAV @ PRAMOD KUMAR son of Hirdai Rai,
resident of village- Jaganpura, P.S.- Gaurichak, District- Patna
2. Asharfi Yadav, son of Late Biphani Rai, resident of village- Phulia Tola,
P.S.- Phulwarisharif, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Ram Pravesh Rai, son of Late Wakil Rai, resident of village- Saristabad
Purbitola, P.O.- Anisabad, P.S. - , District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Umesh Prasad
For the Opposite Party/s : Mr. Anil Prasad Singh (App)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

7 19-03-2018 Heard the learned counsel for the petitioners and

learned APP for the State.

This application has been filed for quashing the order
dated 18.02.2015 passed by learned Additional District & Sessions
Judge-VI, Patna in Cr. Rev. No. 809 of 2011 by which the revision
petition has been rejected upholding the order dated 09.08.2011
passed in Complaint Case No. 757(C)/05 passed by Judicial
Magistrate, 1st Class, Patna rejecting the petitioners' petition for
discharge under Section 245 Cr.P.C.

The main allegation levelled against these petitioners
is that they were identifier on the deed of gift dated 28.06.1995



which is alleged to have been executed by Ram Dahin Rai in favour of Sakaldeep Rai. The complainant has alleged that aforesaid deed of gift executed in favour of Sakaldeep Rai, who is said to be close relative of Ram Dahin Rai was living with Ram Dahin Rai is entirely false.

The aforesaid deed of gift dated 28.06.1995 was challenged as it was never within the knowledge of Ram Dahin Rai. Ram Dahin Rai executed deed of will in favour of complainant on 22.03.2001 and by Deed of Will Ram Dahin Rai transferred his estate in favour of his sister-in-law. He never executed deed of Gift in Kolkatta in favour of anyone and the Deed of Gift was got registered by impersonation of Ram Dahin Rai. The aforesaid Deed of Gift did not bear the signature or L.T.I of Sakaldeep Rai. The signature of Ram Dahin Rai was forged. All these criminal acts were done by Sakaldeep Rai in connivance with the petitioners to grab the estate of Ram Dahin Rai.

The learned Magistrate has rejected the petition filed on behalf of the petitioner for discharge on 09.08.2011 on the ground that there is sufficient material to frame charge on the basis of evidence of witnesses.

The learned Sessions Judge has rejected the revision petition filed by the petitioners vide order dated 18.02.2015 on the



ground that there is no bar for continuation of criminal as well as civil proceeding.

Learned counsel for the petitioner has submitted that complainant has also filed Title Suit No. 09 of 2002 for declaring the gift deed dated 28.06.1995, forged and fabricated which is pending in the court below. Learned counsel has further submitted that complainant has also filed L.A. Case No. 93 of 2001 for grant of probate with regard to Will dated 23.3.2001 alleged to be executed by Ram Dahin Rai in favour of the complainant.

Learned counsel for the petitioner has further submitted that another probate case bearing Probate Case No. 75 of 2001 has been filed by Basant Kumar Singh and his two brothers claiming that Ram Dahin Rai has executed the Will with regard to his entire estate on 03.07.1997. Civil suit is already pending between the parties. Title Suit No. 09 of 2002 was filed by the complainant for declaration of alleged gift deed dated 28.06.1995, as forged and fabricated, executed by Ram Dahin Rai in favour of accused no. 1 Sakaldeep Rai. These petitioners are said to be identifier and attesting witnesses of deed of gift dated 28.06.1995.

The Hon'ble Supreme Court in the case of *State of Haryana & Others Vs. Bhajan Lal and Others [1992 Supp (1)*



SCC 335], has set out certain parameters in paragraph 102 of the judgment. It would be useful to quote para 102 of the said judgment.

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.



(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) 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 and with a view to spite him due to private and personal grudge.”



From the allegation made in the complaint petition, this Court finds that criminal proceeding filed by the complainant is manifestly attended with malafide and the same has been filed for taking vengeance against the petitioners. The Title suit is already pending between the parties. From nature of allegation made in the complaint, this Court finds that it is a matter of purely civil dispute. The allegation made in the complaint petition does not make out case of commission of any criminal offence.

Therefore, the impugned orders passed by the learned Magistrate as well as learned Sessions Judge dated 09.08.2011 and 18.02.2015 respectively along with entire criminal proceeding pending against the petitioners are hereby quashed.

This criminal miscellaneous application is allowed.

(Sanjay Priya, J)

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