

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38405 of 2016

Arising Out of PS.Case No. -147 Year- 2016 Thana -KATEYA District- GOPALGANJ

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Dr. Mahima Pandey, son of Late Ramshakal Pandey, resident of Village- Ameya,
P.O.- Mahuawan, P.S.- Kateya, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Jagadish Pandey, son of Late Ramshakal Pandey, resident of Village- Ameya,
P.O.- Mahuawan, P.S.- Kateya, District- Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Advocate. Mr. Sanjay Kumar Pandey-5, Advocate.
For the Opposite Party No. 2	:	Mr. Prince Kumar Mishra, Advocate. Ms. Anukriti Jaipuriyar, Advocate.
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-09-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the First Information Report of Kateya P.S. Case No. 147 of 2016 (G.R. No. 1851 of 2016) instituted for the offence under Sections 420, 467, 468, 469, 471, 474 and 120(B) of the Indian Penal Code.

2. Heard learned counsel for the petitioner, learned counsel for the informant as well as learned counsel for the State.

3. Counsel for the petitioner has submitted that it is a malicious prosecution. A Title Suit has also been filed by the petitioner which is pending between the parties and disputed land is



included in the aforesaid Title Suit also. It has further been submitted that learned Magistrate without application of mind has sent the complaint for registration of First Information Report in the Police Station.

4. Counsel for the petitioner in support of his submission has relied upon a judgment of Hon'ble Supreme Court reported in *(2015) 6 SCC page 287 (Priyanka Srivastava and Another Vs. State of Uttar Pradesh and others)*. He has also relied upon a Judgment reported in *(2007) 12 SCC page 1 (Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others)*, wherein, it is held that in a civil dispute criminal prosecution will be bad in law.

5. Counsel for the opposite party No. 2 has filed counter affidavit levelling allegation that petitioner being the British national has not disclosed the correct fact about executing sale deed with respect to the land in India, describing himself as Indian National and in this manner, the petitioner has committed wrongful act and is liable for criminal prosecution.

6. Counsel for the opposite party No. 2 has enclosed sale deed executed by petitioner in favour of different persons, copy of which, have been enclosed as Annexure-R/1 series to the counter affidavit. He has further submitted that submission made on behalf of



petitioner is disputed question of facts which can properly be investigated by the police.

7. This Court after hearing the parties and looking into allegation in the complaint petition finds that complainant has alleged that petitioner is own brother of opposite party No. 2. He has obtained British citizenship and is living in Great Britain since 1975. It has further been alleged that petitioner has executed sale deed with respect to ancestral property illegally without describing himself to be a British citizen, which caused wrongful loss to the informant. It is also alleged that petitioner has committed wrongful act and has misappropriated the ancestral property of the informant.

8. This Court after looking into allegation in the complaint petition finds that there are disputed question of fact by way of allegation with regard to nationality as well as illegality committed in executing the sale deed which can only be ascertained after proper investigation by the police.

9. Counsel for the petitioner submits that investigation is still pending before the police on the complaint, which was sent to P.S. under Section 156(3) Cr. P.C.

10. From complaint petition it appears that there are serious allegation which require to be properly investigated.

11. Therefore, this Court does not find any illegality in



the impugned order passed by learned Magistrate forwarding the complaint to Police Station for investigation under Provision of Section 156(3) Cr. P.C.

12. This Criminal Miscellaneous application is accordingly dismissed.

13. The police is directed to conclude the investigation in accordance with law and submit final report under Section 173 Cr. P.C. within a period of three months from the date of receipt of this order.

14. The petitioner will produce all the relevant documents before the police. The police will consider all documents before submitting final report in the case under Section 173 Cr. P.C.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	24/09/2018
Transmission Date	24/09/2018

