

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46506 of 2014

Arising Out of PS. Case No.-1230 Year-2013 Thana- COMPLAINT CASE District- Supaul

1. Indradeo Yadav S/o Chhedi Yadav
2. Sakaldeo Yadav S/o Chhedi Yadav
3. Reshma Devi W/o Chhedi Yadav
4. Chhedi Yadav S/o Late Subadhi Yadav All are resident of Village
- Kisanpur, Tola - Kumarganj, P.S. - Kisanpur, District - Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sonelal Yadav, S/o Late Murat Yadav, R/o Vill-Kisanpur Tola Kumarganj, P.S.
Kisanpur, District-Supaul.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Amar Nath Yadav
For the State	:	Mr. Mukeshwar Dayal (App)

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 27-07-2018

Heard learned counsel for the petitioners and learned APP for the State. No one turned up on behalf of O.P. no. 2 despite putting appearance in the case.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 03.09.2014 passed by Judicial Magistrate 1st Class, Supaul in Complaint Case no. 1230C of 2013, C.R.I. no. 5168 of 2013 whereby the learned Magistrate finding making out *prima facie* case under Sections 465, 467, 468 of the Indian Penal Code against the petitioners, ordered to issue summons against them.



3. It is submitted by learned counsel for the petitioners that the property in question is khatiyani land. petitioner no. 3 Reshma Devi got the aforesaid property in partition and she gifted out the aforesaid property to the petitioner nos. 1 and 2, who happen to be her sons by gift deed dated 28.09.2011. Thus, the petitioner nos. 1 & 2 are absolute owner and in possession thereof. Their names have been mutated in the revenue record over the said property. O.P. no. 2 (complainant) filed Mutation Appeal no. 12 of 2012 before the court of Additional Collector, Supaul against the said mutation order, which was dismissed and mutation order passed by the Circle Officer, Kishanpur in favour of petitioners was confirmed. Against the said order of Addl. Collector, Supaul, O.P. no. 2 has filed Mutation Case no. 8 of 2013 which is pending disposal. It is further submitted that for declaring the aforesaid property to be of own, O.P. no. 2 has filed Title Suit no. 390 of 2013 against the petitioner nos. 1 to 3 and others which is pending disposal. The O.P. no. 2 has failed to substantiate as to what manipulation or forgery in documents has been committed by the petitioners in procuring the aforesaid property and getting their names mutated over it. It is further submitted that as a Title Suit is pending between the parties



regarding property in question, hence, the aforesaid order taking cognizance of the offence against the petitioners is nothing but an abuse of process of the Court. So, the impugned order is liable to be quashed.

4. On the other hand, learned APP advocating the correctness and validity of the impugned order has submitted that after correctly appreciating the complaint petition and material available on record, the learned lower court has rightly taken cognizance against the petitioners, which is liable to be upheld and this quashing petition is shorn of merit and is liable to be dismissed.

5. From perusal of record, it appears that O.P. no. 2 (complainant) has filed Complaint Case no. 1230C of 2013 against the petitioners and others with the case in succinct that he along with his cousin has purchased the property in question vide registered sale deed dated 3.09.1970 from one Devan Chaudhary and they are in possession thereof. But the petitioners hatching conspiracy got executed gift deed no. 5979 dated 28.09.2011 regarding property in question besides other property admeasuring 1 bigha, 1 katha, 15 dhur by petitioner no. 3 in favour of the petitioner nos. 1 and 2. On getting information of the same, he obtained certified copy of the gift



deed and organized Panchayati. The petitioner nos. 1 to 3 admitted their mistake and promised to execute the deed of surrender in favour of the complainant, but they did not keep their promise and got their names mutated over the property in question taking officials of C.O. office, Kishanpur in their collusion. The O.P. no. 2 (complainant) filed Mutation Appeal no. 12 of 2012 before the court of Addl. Collector, Supaul against the said mutation order.

6. From perusal of record, it appears that O.P. no. 2 is claiming the property in question of his own and the petitioners are claiming it of their own by procuring the same in partition by petitioner no. 3 and subsequently gifting the same to her sons petitioner nos. 1 and 2. Admittedly, petitioner nos. 1 and 2 got their names mutated over the property in question. Against the said mutation order, O.P. no. 2 (complainant) filed Mutation Appeal no. 12 of 2012 before the court of Addl. Collector, Supaul which was dismissed and mutation order passed by Circle Officer, Kishanpur in favour of the aforesaid petitioners was confirmed. Against the said dismissal order, the O.P. no. 2 has filed Mutation Case no. 8 of 2013 which is pending disposal. He has also filed Title Suit no. 390 of 2013 against the petitioner nos. 1 to 3 and others *inter alia* for



declaring their title over the property in question and canceling the aforesaid gift deed. In the aforesaid title suit, he has also admitted mutation of the name of the petitioner nos. 1 & 2 over the property in question and dismissal of his Mutation Appeal no. 12 of 2012 by Addl. Collector, Supaul filed against the aforesaid mutation order. Thus, there appears to be complicated question of title involved in the case under hand which is pending disposal in the Civil Court, Supaul.

7. From perusal of complaint petition, it appears that O.P. no. 2 has not disclosed as to what forgery has been committed by the petitioners in execution of the aforesaid gift deed. From perusal of complaint petition it further appears that it even does not disclose the ingredients of the aforesaid offence said to have been committed by the petitioners.

8. It is well settled that if a complaint does not disclose ingredients of an offence said to have been committed by the accused, the complaint and consequential criminal proceeding have to be struck down because in such a case no criminal action would lie.

9. *Hon'ble Apex Court in State of Andhra Pradesh Vs. Goloconda Linga Swamy, 2004(4) PLJR (SC)11* has been pleased to rule that in a proceeding instituted on



complaint, exercise of inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same.

10. In the facts and circumstance, the order taking cognizance of the offence against the petitioners, in my considered opinion is nothing, but an abuse of process of the Court. Hence, the impugned order is quashed and the petition is, accordingly, allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03-08-2018
Transmission Date	03-08-2018

