

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47686 of 2014

Arising Out of PS.Case No. -1068 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Kabutari Devi, W/o Late Raj Narain Singh
 2. Manorama Devi, W/o Arbind Kumar Singh
 3. Arbind Singh @ Pappu @ Arbind Kumar Singh, S/o Late Raj Narain Singh
 4. Niraj Kumar Singh, S/o Sanjay Kumar Singh
 5. Guddi Devi, W/o Niraj Kumar Singh
 6. Gaitri Devi, W/o Sanjay Kumar Singh
 7. Sanjay Singh @ Sanjay Kumar Singh, S/o Late Raj Narain Singh
- All are Resident of Village Bishunpura, Police Station Bihta, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Balmati Devi, W/o Jitendra Kumar Singh, Resident of Village Bishunpura, Police Station Bihta, District Patna.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate. Mr. Ujjawal Kumar Singh, Advocate. Mr. Pankaj Kumar, Advocate.
For the State	:	Mr. Ajit Kumar, Advocate.
For the Opposite Party No.2	:	Mr. Bibhakar Tiwary, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 17-07-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 5.8.2014 passed by the learned Judicial Magistrate, 1st Class, Danapur, in Complaint Case No. 1068(C) of 2013 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offences under Sections 323, 380 and 34 of the Indian Penal Code.



2. It has been submitted that petitioner No. 1 died during pendency of the application.

3. Therefore, the application is dismissed as withdrawn with regard to petitioner No. 1.

4. Heard learned counsel for the petitioners, learned counsel for the opposite party No. 2 and State.

5. Learned counsel for the petitioners has submitted that Title Suit No. 27 of 2013 has been filed by the opposite party No. 2 against the petitioners which is pending in the court of learned Sub Judge-I, Danapur, Patna, for the aforesaid property in dispute. It has further been submitted that opposite party No. 2 has executed a sale deed in favour of petitioner No. 2 who is mother of petitioner Nos. 3 and 7 with respect to the aforesaid property for which consideration money was paid to her in the year 1985 at the time of execution of sale deed on 8.7.1985. The opposite party No. 2 again executed sale deed in favour of petitioner No. 2 on 17.02.1991 after taking consideration money of Rs.5,000/- for plot No. 451/455 in Khata No. 173. The opposite party No. 2 is now claiming her title about the said two plots when the petitioners constructed their house over it.

6. Learned counsel for the petitioners has submitted that it is a matter of purely civil dispute and only to put pressure upon the petitioners, the present Criminal Case has been lodged by the



informant. Counsel for the petitioners has relied on a decision reported in **(2000) 2 SCC 636 (G. Sagar Suri and Another Vrs. State of U.P. and Others)**, **(2013) 11 SCC 673 (Paramjeet Batra Vrs. State of Uttarakhand and Others)**, **(2012) 10 SCC 303 (Gian Singh Vrs. State of Punjab and Another)** and **(2014) 6 SCC 466 (Narinder Singh and Others Vrs. State of Punjab and Another)**

7. Counsel for the opposite party No. 2 has submitted that opposite party No. 2 has purchased aforesaid property by two sale deeds, one on 17.02.1991 and another on 14.2.1992 and thereafter, she has constructed the house over the aforesaid property. He has relied upon a decision reported in **2014 (3) PLJR Page 235 (SC) (Mosiruddin Munshi Vrs. Md. Siraj and Anr.)**

8. In the complaint petition it is alleged that after execution of two sale deeds, the complainant has constructed the house. The petitioners are agnates of the opposite party No. 2. The husband of the complainant resides in Jharkhand where he is working as Electrical Engineer in Energy Department. It is alleged that due to unavailability of family members, there was no one to keep the house clean and lighten the lamp, so occasionally the complainant comes on the request made by the accused persons and being agnates, the opposite party No. 2 allowed them to live in the house since 2009. It is further alleged that opposite party no. 2 locked two rooms of her



house in which household articles were kept. Thereafter, the opposite party No. 2 has been residing in Ranchi with her husband. When opposite party No. 2 came to her house on 6.1.2013, she saw that the accused persons had broken the locks of two rooms and had kept the house hold articles in scattered way and were misusing the same. When the complainant asked about it, then the accused persons abused her and told that she would not be allowed to live in the house. It is alleged that accused persons were trying to usurp the property by committing breach of trust.

9. It is admitted position between the parties that complainant has already filed Title Suit No. 27 of 2013 with respect to properties as mentioned in the complaint petition which is pending in the court of Sub Judge-I, Danapur.

10. Learned counsel for the petitioners has submitted that police during investigation has found the case totally civil in nature and submitted final form. The court below on the basis of protest petition took cognizance against the petitioners by the impugned order.

11. In such circumstances, after looking into nature of allegation made in the complaint petition and submission of the parties, this Court finds that it is a matter of purely civil dispute and no *mens rea* of criminal offence is found on the basis of allegation



made in the complaint petition.

12. Therefore, the impugned order dated 5.8.2014 passed by the learned Judicial Magistrate, 1st Class, Danapur, in Complaint Case No. 1068(C) of 2013 along with the entire Criminal Proceeding with respect to petitioner is hereby quashed.

13. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	25/07/2018
Transmission Date	25/07/2018

