

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51968 of 2014

Arising Out of PS.Case No. -222 Year- 2012 Thana -EAST CHAMPARAN COMPLAINT District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Achhelal Sah, son of late Satyanarayan Sah,
 2. Jadolal Sah, son of late Satyanarayan Sah,
 3. Muna Sah, son of late Satyanarayan Sah, all resident of village- Bare Bariyarpur, P.S. - Chhatauni, District - East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar,
2. Shankar Sah, son of late Mohan Sah, resident of Village - Bare Bariyarpur, P.S. - Chhatauni, District - East Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Advocate

For the Opposite Party No.1: Mr. Shantanu Kuamr, APP

For the Opposite Party No.2: Mr. Vijay Shankar Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 09-05-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 30.07.2013 passed by the Judicial Magistrate, 1st class, Motihari, East Champaran, in Trial No.4898 of 2013 arising out of Complaint Case No.222 of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the Petitioners for the offence under Section(s) 417 Indian Penal Code.

2. The Complainant's case, in short, is that the land as mentioned in the Complaint Petition are *Khatiyani* land of the Complainant which he got from decree of Court passed in Title Suit No.260 of 2006. The accused persons had knowledge of the aforesaid decree as they had also appeared in Title Suit No.260 of



2006. Accused Nos.1 and 2 in spite of aforesaid knowledge has executed sale deed with respect to aforesaid land to Accused No.4 and 5 on which Accused Nos.3 and 6 are witnesses. The Complainant enquired from the accused persons then they gave threat to the Complainant and refused to settle the matter.

3. Counsel for the Petitioners has submitted that it is a matter of purely civil dispute. Title Suit No.260 of 2006 is still pending and no decree has been passed in favour of any party. The Petitioners have executed Sale Deed with respect to the land, which they got through family arrangement. Action of the Petitioners did not come within the purview of cheating defined under Section 415 Indian Penal Code.

4. Counsel for the Complainant-Opposite Party No.2 has submitted that the Sale Deed has been executed by the accused persons just to cause wrongful loss to the Complainant although Title Suit No.260 of 2006 is still pending.

5. Learned APP has submitted that there is no illegality in the impugned order.

6. This Court after hearing submission of both the parties and looking into the allegations made in the Complaint Petition as well as perusing the impugned order finds that there is specific allegation against these Petitioners that they have executed Sale Deed with respect to the land, which was the subject matter of Title Suit No.260 of 2006. It is mentioned in the Complaint Petition



that title of the land, in dispute, has been declared in favour of the Complainant in Title Suit No.260 of 2006.

7. Counsel for the Opposite Party No.2 has submitted that Title Suit No.260 of 2006 is still pending. The Petitioners had knowledge of pendency of Title Suit No.260 of 2006. The Sale Deed has been executed with respect to the land in dispute during the pendency of Title Suit by Accused Nos.1 and 2 in favour of Accused Nos.4 and 5 on which Accused No.3 and 6 are witnesses.

8. There is sufficient ingredient of offence under Section(s) 417 Indian Penal Code on the basis of allegation made in Complaint and statement of witnesses recorded during enquiry. The learned Magistrate is only required to see *prima facie* case at the time of holding enquiry.

9. Therefore, this Court does not find any illegality in the impugned order passed by the Court below.

10. This application is, accordingly, **dismissed**.

11. The Court below is directed to proceed with trial in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	12-04-2018
Uploading Date	12-05-2018
Transmission Date	12-05-2018

