

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10616 of 2016

Arising Out of PS. Case No.-351 Year-2015 Thana- COMPLAINT CASE District- Sheohar

1. Rajiv Ranjan (Advocate) S/o late Bindeshwari Singh R/o Original Resident of Village -Banshi Pachra P.s Tariyani Distt Sheohar at Present residing in ward no. 4, Nagar Panchayat Dumra ,P.s Dumra District Sitamarhi.
2. Dharnidhar@Dhari Raman Sharma S/o late Yogendra Sharma
3. Prakash Kumar Sharma@Tinku S/o Dharnidhar Raman Sharma.
4. Anjani kumar Sharma S/o late Yogendra Sharma Petitioners no. 2 to 4 resident of Village- Khairwa Darp P.s +District Sheohar.
5. Saroj Singh W/o Kirshna Chandra Pd.Singh R/o Village- Ramsen Nagar, Panchayat +PS- Barihiya District Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Prabha Shankar Nath Singh S/o late Jagdish Narain Singh resident of Village -Khairwa Darp , P.s+District- Sheohar , at Present Advocate Civil Court Sheohar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Ms. Mallika Mazumdar
For the State	:	Mr. Narendra Kr.Singh, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 27-06-2018

Ms. Mallika Mazumdar appears for the applicants.

None appears on behalf of the respondent even though served and represented by counsel.

This proceeding under Section 482 of the Code of Criminal Procedure is pending since 2016 and it is being listed continuously for the last more than two weeks. The petitioners have appeared and the respondent has not appeared.

In view of the above, I proceed to deal with the matter after hearing learned counsel for the petitioners and on perusal of



the record. Seeking quashing of an order dated 28.01.2016 passed by the Chief Judicial Magistrate, Sheohar in Complaint Case No. 351 of 2015 taking cognizance of offences under Sections 420, 467, 471 and 120B of the Indian Penal Code this application has been filed under Section 482, CrPC. The primary ground for quashing the complaint is that the complaint pertains to drafting of a Will by petitioner no. 1, an Advocate, its attestation and execution by the other petitioners and the allegation is that the Will is a forged and fabricated one. It is pointed out that the issue with regard to the probate of the Will and another property is pending consideration in two probate cases being Probate Case No. 2 of 2014 before the District & Sessions Judge, Sheohar and before this Court in CWJC No. 8399 of 2014, arising out of the dismissal of Probate Case No. 5 of 2014 on technical ground and so long as both these probate cases are pending with regard to the validity of the Will, taking cognizance of the matter is unsustainable.

Facts in brief goes to show that the complainant claims to be the brother of one Urmila Devi who is said to have executed the Will in favour of the complainant and his children because Urmila Devi died childless and it is the complainant who had looked after her. It is alleged that with regard to the property of Urmila Devi a forged Will has been drafted by applicant no. 1, an



Advocate, applicant nos. 2, 4 and 5 have attested the Will and the Will has been drafted on wrong advice given by applicant no. 5 Saroj Singh. Inter alia contending that the Will in question is a forged document which has been obtained by way of fraud the complaint in question has been lodged.

However, from the body of the complaint I find that with regard to the Will in question, namely, two Wills by the Testator, Probate Case No. 2 of 2014 is pending in the court of the District & Sessions Judge, Sheohar and in another case Probate Case No. 5 of 2014 in view of certain orders passed dismissing the probate case the matter is sub-judice before this Court in CWJC No. 8399 of 2014. On a scanning of the complaint which is available on record from page-1 onwards it is clear that the complaint is with regard to drafting, attestation and creation of forged Will and the question as to whether the Will is forged or not is pending consideration in the probate case. That being so, merely based on the general allegation that the Will is a forged document, at this stage particularly when civil proceeding is pending pertaining to execution of the Will, no prima facie case is made out for proceeding against the petitioners who are Advocate and Attesters of the Will. Except for making omnibus general allegation that the Will in question is a forged one and has been attested and executed



by the Testator no evidence or prima facie material has been brought on record to show that offence under Section 420 IPC or ingredients necessary for an offence under Section 120B IPC is made out against the petitioners.

Keeping in view the aforesaid and taking note of the totality of the circumstances, this application is allowed. Proceedings against the petitioners in Complaint Case No. 351 of 2015 pending in the court of Chief Judicial Magistrate, Sheohar are quashed.

(Rajendra Menon, CJ)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	28.06.2018

