

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19377 of 2014

Arising Out of PS. Case No.-3698 Year-2011 Thana- PURNIA COMPLAINT CASE District-
Purnia

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Birendeo Tiwary @ Birendra Tiwary, Son of Late Kamdeo Tiwary resident of
village- Basudeopur, P.S.- Barharkothi, District- Purnea

... .. Petitioner/s

Versus

1. The State of Bihar
2. Prafulla Ranjan Tiwary Son of Late Lakshmi Narayan Tiwary Resident of
Basudevpur, P.S.- Barhara Kothi, District- Purnea (Bihar).

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. V.R.P.Singh, Advocate. Mr. Arvind Kumar, Advocate.
For the Opposite Party/s :		Mr. Ganesh Prasad Singh, APP Mr. Sanjay Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 25-06-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. This application is filed under Section 482 Cr.P.C.
seeking quashing of the cognizance order dated 28.09.2012
passed by Mr. Ashish Mishra, Judicial Magistrate, 1st Class,
Purnea in Complaint Case No. 3698 of 2011 whereby
cognizance has been taken against the petitioner under Sections
420 and 468/34 of the Indian Penal Code.

3. The case of the complainant/O.P. No. 2, in brief, is that
he is absolute owner of 42 decimals of land relating to Khata
No. 62, Khesra No. 1321 situated at Mauza-Barhara Kothi
deriving his title as successor of late Lakshmi Narain Tiwary. In



the year 2009, father of the complainant expired, thereafter petitioner/accused sold 69 decimals of said plot including the share of the complainant though in the year 1974 itself, the said land was mutated in the name of respective co-sharers, at their request, by the Circle Officer accordingly lands were demarcated, as per mutation order dated 24.03.1974 passed by the Circle Officer, but by sale deed dated 25.03.2010, petitioner sold 79 decimals land to Anil Kumar Mehta after taking consideration amount of Rs. 1,26,000/- in connivance with accused no. 2 knowing fully well that excess land sold by the accused belongs to the share of the complainant.

4. Learned counsel for the petitioner submits that petitioner and complainant are agnates and there is no partition at all by the court or by the family arrangement rather the land in question is recorded in the name of Krishna Deo Tiwari, grandfather of the petitioner and with respect to other lands situated in another Mauza, already a Title Suit No. 308 of 2010 was filed by the complainant, so even the allegation of selling land in excess to the proportion of his share, does not amount to forgery or cheating to the complainant. The facts alleged in the complaint do not make out any of the ingredients of cheating and forgery against the complainant, so no *prima facie* case



under Sections 420 and 468 of I.P.C. is made out, hence the order of cognizance is bad and liable to be set aside.

5. Contrary to submission advanced by leaned counsel for the petitioner, learned counsel for the complainant submits that land in question belongs to another Mauza. In the year 1974, land was mutated in the name of respective co-sharers and mutation order was also passed, according to the arrangement, petitioner was allotted 42 decimals land and 42 decimals to the complainant but by sale deed situated at Mauza-Barhara Kothi, the petitioner has sold 79 ½ decimals much excess to his share inclusive land of the complainant.

6. Having considered rival submissions and on perusal of record and taking into entirety the accusation made in the complaint, the Court finds no case of forgery or cheating being made out against the petitioner in the present case. Forgery for the purpose of cheating is defined under Section 468 I.P.C., whereas forgery is defined under Section 463 I.P.C. and making of a false document is defined in subsequent Section 464 I.P.C. which reads as follows:

“**464.** Making a false document.- A person is said to make a false document or false electronic record-

First- Who dishonestly or fraudulently-

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part of



any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the executing of a document or the authenticity of the electronic signature, With the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not known the contents of the document or electronic record or the nature of the alteration.

7. The aforesaid section envisages three conditions enumerated therein for constituting an offence of forgery by making a false document. First, if any person dishonestly or fraudulent makes, signs, seals or executes a document or part of a document or transmit any electronic record or affixes any electronic signature or makes any mark denoting the execution of a document with the intention of causing the same to be



believed that such document was made or signed or sealed by the authority of a person who has not executed the same. Second condition is that whoever without any lawful authority, dishonestly or fraudulently, alters a document or electronic record with regard to any material part. Third instance is when any person dishonestly or fraudulently causes other person to sign, seal or execute or make alteration in document or electronic record knowing fully that such person by reason of unsoundness of mind or intoxication or by practicing deception upon him, does not know the contents of the document or electronic record or nature of the alteration with regard to document. Thus there is absence of any kind of inducement to the complainant and there is no delivery of any property to the petitioner by the complainant. However, if the purchaser of the land from the petitioner make allegation of selling the land of other having no right and title by inducement of fact of false representation and consideration money transmitted then in such case *prima facie* a case of cheating is made out.

8. So only in these three aforesaid conditions, if any document is executed or signed with dishonest and fraudulent intention, forgery is committed but in present case none of three conditions is found. Cheating is defined under Section 415



I.P.C. and Section 420 I.P.C. is an aggravated form of cheating. So the cheating means as per legal definition deceiving any person with fraudulent and dishonest intention to induce the said person to deliver any property. In the present case, the allegation is of executing sale deed by the petitioner with respect to the land in question in excess of his share rather inclusive share of the complainant. So the sale deed dated 25.03.2010 executed by the petitioner does not come within the purview of making of a false document. The dispute between the parties appears a civil dispute but *prima facie* no case of cheating and forgery is made out.

9. In view of the aforesaid discussions, continuation of criminal proceeding would be abuse of the process of the court hence the impugned order dated 28.09.2012 passed in Complaint Case No. 3698 of 2011 by the Judicial Magistrate, 1st Class, Purnea as well as subsequent criminal proceeding in the matter with respect to this petitioner is set aside. The application stands allowed.

(Arun Kumar, J)

sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.07.2018
Transmission Date	19.07.2018

