

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.748 of 2013

Arising Out of PS. Case No.-210 Year-2007 Thana- SURYAGARHA District- Lakhisarai

1. Annapurna Devi W/o Late Jwala Prasad Singh
2. Nirjala Devi, W/o Muneshwar Prasad Singh
3. Krityanand Singh @ Buchhu Singh son of Late Ramnandan Singh

All are residents of village Kasay Tola, Rahatpur, P.S. Surajgarha, Dist. Lakhisarai at present all are residents of Mohalla Karyanand Nagar Lakhisarai, Purani Bazar Ward No.5, P.S. & District-Lakhisarai.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Shankar Prasad Singh son of Late Vidit Narayan Singh, R/o village Kasoy Tola Rahatpur, P.S. Surajgarha, Dist. Lakhisarai.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Singh
For the Opposite Party/s	:	Mr. Rajendra Nath Jha (App)

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 21-06-2018

Heard learned counsel for the petitioners and the State.

The petitioners are aggrieved by the order dated 27.9.2012 passed by learned J.M. Ist Class, Lakhisarai in G.R. Case no. 865 of 2007 arising out of Surajgarha P.S. case no. 210/2007 by which discharge petition has been rejected.

Learned counsel for the petitioners has submitted that since civil suit is pending between the parties vide Title suit no. 36 of 1996, the continuance of criminal proceeding is bad in law. Learned counsel for the petitioners has relied on judgments of the Hon'ble Supreme Court reported in **(2009)8 SCC 751 (Mohammed Ibrahim and ors. vs. State of Bihar and Anr.)**



and *(2009)7 SCC 495 (Devendra & Ors. vs. State of Uttar Pradesh & Anr.)* and has argued that when civil proceeding is pending the continuance of the criminal proceeding is bad in law. It is further submitted that purchaser has not filed this criminal case. The informant is not an affected party. There is no ingredients of the offences alleged to be made out. It is further submitted that there is dispute between the two co sharer. The allegation is that one co sharer sold the land excess of his share. As per the decision rendered in **Mohammed Ibrahim case** (supra) civil remedy is available to the co sharer and no criminal proceeding would be maintainable. Learned counsel for the petitioners has relied upon the decision rendered in the case of **Mohammed Ibrahim** (Supra) in order to submit that there is tendency of the complainants attempting to give the cloak of a criminal offence to matters which are purely civil in nature just to settle the personal scores.

Learned counsel for the State has submitted that the name of the counsel for the informant is appearing in the daily cause list but none appeared on behalf of the informant at the time of hearing of this application. It is further submitted that there is ingredients of the criminal offence as alleged in the written report. The police has submitted charge sheet after investigation



of the case. The cognizance has been taken after submission of charge sheet. The Court below, by the impugned order, has found sufficient material to frame charge against the petitioners for the offence alleged in the written report.

The allegation made in the written report is that the partition between the parties had already taken place in the year 1952. The informant Shankar Pd. Singh has alleged that he got share in the land by way of partition suit no. 28 of 2017 of 1950-52 measuring 29 decimals of land. The informant has further alleged in the written report that partition has taken place between the parties by partition suit no. 28 of 2017 of 1950-52 and both the parties got 29 decimals of land in Khata no. 398, Plot no. 461. The petitioners thereafter sold the land of informant by executing a forged sale deed. The petitioners have got 29 decimals of land but they have sold 46.5 decimals of land.

Learned counsel for the petitioners has pointed out Annexure-3 and has argued that petitioner no.3 had filed an application for information with regard to the land of khata no. 398, plot no. 461 before Circle Officer, Surajgarha. The information was given that total area of 53 decimals of land remained in favour of the petitioners in connection with Khata



no. 398 and Plot no. 461. Thereafter the petitioners have sold the land within the aforesaid area. The aforesaid information received by the petitioner no.3 is enclosed as Annexure-3. It is further submitted that informant had filed Title suit no. 36 of 1996 regarding disputed land with regard to khata no. 398 and plot no. 461. The petitioners were made defendants in the suit. The suit is pending before the Sub-Judge-I, Lakhisarai in which ex-parte decree was passed in favour of the informant. Thereafter the informant filed Title Execution Case no. 3 of 2006 in Title Suit no. 36 of 1996 for execution of judgment and decree dated 26.5.2003 before the Court of Sub-Judge 1st Lakhisarai. The petitioners and others have filed Misc. case no. 3 of 2007 under order 9 Rule 13 of the C.P.C. on 10.8.2007 before the Court of Sub-Judge 1st Lakhisarai for setting aside the ex-parte decree dated 26.5.2003 passed in Title Suit no. 36 of 1996. The learned Court below has ordered that till disposal of Misc. case no. 3 of 2007 all the cases of Title Execution no. 3 of 2006 shall remain stayed. The petitioners have enclosed all these orders as Annexures 8 and 9.

Having heard learned counsel for the petitioners, State and also the narration of the allegations made in the written report as stated above and also on perusing the impugned



order, this Court finds that cognizance in this case was taken on 5.1.2008 for the offence under Sections 419, 420, 467, 468 and 471 of the I.P.C. after submission of the charge sheet by the police after investigation of the case and finding the case true against all these petitioners. It is admitted case that partition had taken place between the parties by Partition Suit no. 28 of 2017 of 1950-52. Both the parties got 29 decimals of land in Khata no. 398, Plot no. 461. The learned Magistrate has mentioned in the impugned order that in paragraph nos. 6,7,8, 11, 19 and 20 of the case diary the prosecution witnesses have fully supported the prosecution case.

The learned Magistrate has further mentioned in the impugned order that document itself shows that there was total 58 decimals of land in Khata no. 398, Plot no. 461. The said land was partitioned between the parties as 29 decimals of land each by order passed in Partition Suit no. 28 of 1917 of 1950-52. Once the partition has taken place between the parties the parties have got right and title over the land of his share. There is specific allegation against these petitioners that they have sold the share of the informant after judgment and decree passed in partition suit by creating forged and fabricated sale deed. The Hon'ble Supreme Court in the case of



Mohammed Ibrahim (supra) (case as relied upon by the counsel for the petitioners) has clearly held in para 8 of the judgment, that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. Similarly, in another judgment of **Devendra case** (supra) the Hon'ble Supreme Court has held in para 13 that there cannot, however, be any doubt or dispute whatsoever that in a given case a civil suit as also a criminal proceeding would be maintainable. They can run simultaneously. Result in one proceeding would not be binding on the court determining the issue before it in another proceeding.

This Court, after looking into the allegation against the petitioners in the written report and also in the impugned order finds that there are ingredients of the offences as alleged against the petitioners in the written report. There is no bar of continuing of criminal proceedings if necessary *mens rea* is made out and ingredients of criminal offences are available. The informant was forced to file T.S. 36/1996 against the petitioners when they have executed sale deed in excess of their share of land which they got by decree passed in Partition Suit No. 28 of 2017 of 1950-52. The Magistrate at the time of



framing of charge is only required to see whether there are sufficient materials in the case to frame charge. In the instant case there is specific allegation in the written report that petitioners have sold land excess of their share, which belonged to these petitioners in view of judgment and decree passed in Partition Suit no. 28 of 2017 of 1950-52.

Section 240 (1) Cr. P.C. clearly speaks that if, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Section 239 of the Cr. P. C. talks about the condition when the accused can be discharged which is quoted hereinbelow:-

“239. When accused shall be discharged.- If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

In the instant case the learned Magistrate has after



perusing the record and materials available after investigation came to the finding that there are sufficient materials to frame charge against the accused persons. Therefore, this Court does not find any illegality in the impugned order passed by the Court below. This Cr. Misc. is, accordingly, dismissed.

The Court below will proceed in the case in accordance with law.

(Sanjay Priya, J)

shyambihari/-

AFR	AFR
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