

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32081 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- GOPALGANJ

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1. Bishwa Nath Singh, son of late Rambhajan Singh,
 2. Jagar Nath Singh @ Jagannath Singh, son of late Rambhajan Singh,
 3. Janardan Singh @ Janardan Singh @ Janardan Kha, son of Bishwanath Singh,
 4. Rajesh Kumar, son of Janardan Singh @ Janardan Prasad Singh @ Janardan Kha,
 5. Rakesh Ratandeep, son of Janardan Singh @ Janardan Prasad Singh @ Janardan Kha,
 6. Ramayan Bhagat @ Ramayan Singh, son of late Leeladhar Singh,
 7. Sanjay Singh, son of Jagar Nath Singh, all resident of village- Bhorey, Police Station - Bhorey, District - Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar,
2. Surendra Jaiswal, son of late Satyanaryan Jaiswal, resident of village - Bhorey, Police Station - Bhorey, District - Gopalganj

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Lokesh Kumar Singh, Advocate
For the Opposite Party/s : Mr. Pranav Kumar, APP
Mr. Nagendra Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 27-04-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 25.05.2013 passed by the Chief Judicial Magistrate, Gopalganj, in Complaint Case No.2978 of 2009/Tr. No.319 of 2013 by which the learned Magistrate has rejected the petition filed by the petitioners for their discharge under Section 245(1) of the Code of Criminal Procedure.



2. Case of the Complainant, in brief, is that he got executed three registered sale deeds in respect of the land, in question, on 18.05.2004, 15.06.2004 and 26.07.2004 having area of 7 Kathas 7½ Dhur from his vendors, namely, Niraj Pratap Rai, Uma Shankar Rai and Durga Prasad Rai. Since then, he was in possession of the land, in question. The vendors of the deed had acquired right, title on the basis of registered deed of gift executed in the year 1929. Further case of the Complainant is that Accused Nos.4 and 5, Rajesh Kumar and Rakesh Ratnadeep, executed sale deed in respect of plot, in question, in favour of Accused Nos.1 to 3 on 03.10.2009 by committing fraud. Accused Nos.6 and 7 are attesting witnesses.

3. The Court below after holding enquiry under Section 202 Cr. P. C. has found *prima facie* case against the petitioners for the offence under Section(s) 467, 468, 469, 471, 120-B Indian Penal Code by order dated 07.04.2010.

4. The petitioners filed Discharge Petition under Section 245(1) of the Code of Criminal Procedure, which was rejected by the Court below by impugned order.

5. Counsel for the petitioners has submitted that it is a matter of purely civil dispute. He has submitted that with respect to subject matter of dispute, Title Suit No.49 of 1992 was fought between the petitioners and the vendors of the Complainant. Said



suit was decreed against the petitioners on 18.07.2006. Some of the petitioners have preferred appeal vide Title Appeal No.124 of 2006 in the Court of the District Judge, Gopalganj, which is pending till date.

6. The Complainant has purchased the disputed land himself in the year 2004 when the Title Suit was pending between the petitioners and the vendors of the Complainant. In such manner, on the date of execution of sale deed by the vendors of the Complainant in the year 2004, title itself was not confirmed as Title Suit No.49 of 1992 was pending between the petitioners and the vendors of the Complainant for the same property. The petitioners have preferred appeal vide Title Appeal No.124 of 2006 in the Court of the District Judge, Gopalganj, for setting aside the judgment and decree passed in Title Suit No.49 of 1992 against the petitioners, which is still pending.

7. In such a situation, the Complainant has got no *locus standie* to raise grievance against the title of the petitioners. Transfer of the lands between the petitioners and the vendors of the Complainant had taken place during the pendency of either Title Suit or Title Appeal. It can only be inferred that the petitioners have made transfer of disputed land between them without having any title on the land, in question, or having defective title on the land, in



question. The Complainant is unnecessarily trying to put criminal law in motion for settling the dispute of civil nature.

8. On the other hand, counsel for the Complainant-Opposite Party No.2 has submitted that he is not challenging the sale deed of the petitioners on the ground of *lis pendence*. He has filed the instant compliant case against the petitioners for committing fraud and criminal act by executing sale deed on 03.10.2009 with respect to the land mentioned in the Complaint Petition in favour of Accused Nos.1 to 3. All the accused persons have committed conspiracy and Petitioner Nos.4 and 5, Rajesh Kumar and Rakesh Ratandeep have executed sale deed in respect of the plot as mentioned in the Complaint Petition in favour of Petitioners Nos.1 to 3 on 03.10.2009 over which Petitioner Nos.6 and 7 are attesting witnesses when Title Appeal filed by the petitioners vide Title Appeal No.124 of 2006 filed in the Court of the District Judge, Gopalganj, was already pending against the judgment and decree passed in Title Suit No.49 of 1992.

9. This Court after perusing the allegation made in the Complaint Petition as well as impugned order and the submission made on behalf of the parties finds that the Complainant was coming in possession of the land, in question, after three sale deeds executed on 18.05.2004, 15.06.2004 and 26.07.2004 from his vendors,



namely, Niraj Pratap Rai, Uma Shankar Rai and Durga Prasad Rai measuring area of 7 Kathas 7½ Dhur. The vendors of the deed had acquired right, title on the basis of registered deed of gift executed in the year 1929. Petitioners have filed Title Suit No.49 of 1992 against the vendors of the Complainant. The suit was decreed against the petitioners on 18.07.2006. Some of the petitioners have preferred Title Appeal vide Title Appeal No.124 of 2006 in the Court of the District Judge, Gopalganj. After passing of the judgment and decree in Title Suit No.49 of 1992 and during pendency of Title Appeal No.124 of 2006 in the Court of the District Judge, Gopalganj, Petitioner Nos.4 and 5 have executed sale deed in respect of the aforesaid land in favour of Petitioner Nos.1, 2 and 3 on 03.10.2009 over which Petitioner Nos.6 and 7 are attesting witnesses.

10. In this view of the matter, all these petitioners had knowledge of judgment and decree of Title Suit No.49 of 1992 passed on 18.07.2006 and against the aforesaid judgment and decree some of the Petitioners have preferred Title Appeal No.124 of 2006 in the Court of the District Judge, Gopalganj, but still in the year 2009, the accused persons in conspiracy with each other, as mentioned above, executed sale deed of the aforesaid land dated 03.10.2009, just to cause wrongful loss to the Complainant.

11. The Hon'ble Supreme Court in the case of *Mohd.*



Ibrahim Vs. State of Bihar reported in (2009) 8 SCC 751 has held that Criminal Courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will be tried as criminal offences, even if they also amount to civil disputes.

12. Similarly, in the case of *Indian Oil Corporation Vs. NEPC India Ltd.* reported in (2006) 6 SCC 736, the Hon'ble Supreme Court has held that remedy under criminal law is not barred, if allegation discloses a criminal offence even if for the act done by the accused persons civil remedy is available in law.

13. Section 463 Indian Penal Code provides that whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

14. In the instant case, from the allegation made in the Complaint Petition, it appears that after passing of judgment and decree in Title Suit No.49 of 1992 against the petitioners, some of the petitioners have preferred Title Appeal No.124 of 2006 in the



Court of the District Judge, Gopalganj, which is still pending. In spite of losing Title Suit and having full knowledge of judgment and decree passed against the petitioners in Title Suit No.49 of 1992, the petitioners, in conspiracy, created forged document i.e. sale deed dated 03.10.2009 with respect to the property, which was already in possession of the Complainant on the basis of the three sale deeds executed in his favour in the year 2004 itself by his vendors with whom the petitioners have fought litigation by filing Title Suit No.49 of 1992,

15. In such view of the matter, preparation of the aforesaid sale deed dated 03.10.2009 by the petitioners in conspiracy with each other was deliberate with intention to cause wrongful loss to the Complainant by committing fraud and forgery.

16. Therefore, at this stage, this Court finds no illegality in the impugned order passed by the learned Court below holding that there are sufficient materials to frame charge against the petitioners for the offence under Section(s) 467, 468, 469, 471, 120-B Indian Penal Code.

17. Accordingly, this Court does not find any illegality in the impugned order passed by the learned Court below.

18. The application is, accordingly, **dismissed**.

19. It is made clear that any observation made in this



order will not have any effect in any manner on the legal rights of the parties either in the pending Title Appeal or in the Criminal Case.

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

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	27-03-2018
Uploading Date	29-04-2018
Transmission Date	29-04-2018

