

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33075 of 2018

Arising Out of PS.Case No. -1111 Year- 2015 Thana -SASARAM NAGAR District- SASARAM
(ROHTAS)

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1. BIRENDRA SINGH @ BIRENDRA KUMAR SINGH@ VIRENDRA KUMAR SINGH, son of Ram Bilash Singh, Resident of Village- Emiliya, P.S. Ramgarh, District Kaimur at Bhabhua.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sanjay Kumar Upadhya S/o Late Sudama Upadhya, Resident of Village-Agin, P.S. Darigaon, District Rohtas at present R/o Sasaram near Takiya Railway's Gomati, P.S. Sasaram (Modal), District- Rohtas.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Tribhuvan Narayan

For the Opposite Party/s : Mr. Sri Zainul Abedin

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 11-10-2018 This application has been preferred for setting aside the order dated 20.03.2018 passed by the learned ACJM-IV at Rohtas in G.R. No.2267 of 2015/Tr.No.8 of 2018 arising out of Sasaram (Model) P.S. Case No.1111 of 2015 registered under Sections 420, 406, 467, 468, 471 and 120B of the Indian Penal Code.

By the impugned order, the learned court below has been pleased to dismiss the application of the petitioner under Section 239 of the Code of Criminal Procedure.

Learned counsel for the petitioner submits that this petitioner is brother-in-law of the co-accused Dinesh Singh. The



name of the petitioner is nowhere in the agreement for sale, but he has been falsely implicated in the present case. Learned counsel further submits that the opposite party no.2 and one Smt. Shashi Devi have jointly filed Title Suit No.32 of 2016 in the court of learned Sub-Judge (Senior Division), Sasaram, Rohtas for recovery of the alleged amount and therefore during the pendency of the suit, the further proceeding in the present case against the petitioner is only an abuse of the process of the Court. It is further submitted that there is no material on the record to frame charge against the petitioner.

Learned counsel for the State has opposed the prayer for setting aside of the impugned order. Learned counsel submits that this petitioner is own brother-in-law of the accused no. 1 Dinesh Singh. It is submitted that this petitioner was given responsibility to sell the land by the co-accused Dinesh Singh and there is an allegation that at his instance, the complainant had paid a sum of Rs.10 lacs to the co-accused who had executed the agreement to sell. It is submitted that the land was a disputed land and when the complainant came to know about this fact and thereafter requested the accused persons to give back his money, on this the accused persons started threatening the complainant.

Having heard learned counsel for the parties and on



perusal of the records, this Court finds that the learned court below has considered the materials available on the record. A number of paragraphs of the case diary have been referred to by the learned court below saying that there are sufficient materials on the record to proceed against the petitioner to frame charge. This Court is of the considered opinion that at this stage the Court is not required to hold a mini trial of the case. It should not be a consideration at this stage that whether in ultimate analysis the petitioner will be convicted or not.

For the present, this Court does not find any reason to interfere with the impugned order. This application is, therefore, dismissed.

(Rajeev Ranjan Prasad, J)

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