

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15652 of 2015

Arising Out of PS. Case No.-1117 Year-2010 Thana- MADHEPURA COMPALINT CASE
District- Madhepura

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1. Sekh Hasim @ Md. Hasim and Ors Son of Late Sekh Safik
 2. Bibi Noor Jahan W/o Sekh Hasim
 3. Parwez Alam@ Md. Ajaj Parwez Son of sekhs Hasim All are resident of Village- Fulout , P.s- Chousa, District- Madhepura.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Lakhi Prasad Modi S/o Late Ramdhari Modi Resident of Village- Fulout East , P.s-Chausa, Distt- Madhepura.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Nafisuzzoha, Advocate
For the Opposite Party/s : Mr.Madhuranand Jha, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 22-08-2019

Heard learned counsel for the petitioners and the State of Bihar.

2. No one appeared on behalf of the opposite party no. 2, though, the matter was adjourned on the prayer of the opposite party no. 2 for today.

3. The petitioners have invoked the inherent power of this court under Section 482 of the Cr.P.C. for quashing the order dated 16.12.2014 passed in Complaint Case No. 1117 of 2010 whereby cognizance has been taken against the petitioners for offences under Sections 420, 120B, 467, 468, 471, 323 and 504 of the Indian Penal Code.

4. The challenge is on the ground that none of the offences are made out on bare perusal of the complaint petition rather criminal prosecution of the petitioner is tainted with mala fide to pressurize in civil suit already going on between the parties.



5. According to the complaint petition the opposite party no. 2 had purchased the referred residential land from Sekh Ramjani through registered sale deed in the year 1975. Petitioner no. 1 Sekh Hasim purchased the same land in the name of his wife Bibi Noor Jahan through registered sale deed dated 22.01.2002 by impersonating someone as son of Sekh Ramjani. It is further alleged that though Sekh Ramjani had died on 12.09.1983. However, the petitioners produced a false death certificate of Sekh Ramjani showing his death in the year 1970.

6. Contention of the learned counsel for the petitioners is that the death certificate of Md. Ramjani issued by the Department of Planning and Development, Govt. Of Bihar at Annexure-4 would show that Sekh Ramjani died on 07.03.1970. The genuineness of the certificate was verified by the authorities of the State Government and it was found genuine. Learned counsel for the petitioners submits that no one has turned up at any stage of the criminal proceeding to claim himself as son of Sekh Ramjani and stating the fact that in fact son of Sekh Ramjani had not executed the sale deed in favour of the petitioner's wife rather fictitious person was produced before the registering authority.

7. According to the learned counsel for the petitioners unless the real person denies the aforesaid fact it cannot be assumed that official act has not been performed correctly and its illegal manner. The complainant has deliberately suppressed name of the son of Md. Ramjani in the complaint petition. Title Suit no. 183 of 2009 brought by complainant and others against the vendor as well as against the purchaser Bibi Noor Jahan, and others praying therein for declaration that sale deed dated 22.01.2002 has been obtained by fraud and impersonation.



8. Contention is that both the pleadings i.e. of fraud and misrepresentation is to be proved by the plaintiff of the suit and presumption is in favour of genuineness of the registered sale deed. Since entire matter is to be adjudicated while deciding the civil dispute between the parties. The criminal prosecution is abuse of the process of the court.

9. On bare perusal of the complaint petition, I do not find that offence of cheating is made out against the petitioners. There is no allegation that the petitioners induced the complainant fraudulently and dishonestly to part away with any property. Even if anyone has been cheated in the transaction she is Bibi Noor Jahan, who has purchased the property for consideration allegedly from a non-title holder.

10. Likewise, no allegation of forgery is made out in the facts and circumstances of this case because apparently there is no material to suggest “making of a false document”. Unless someone appears before the court and claims that he was impersonated by someone while making the sale deed it cannot be said that the sale deed in favour of Bibi Noor Jahan was a false document.

11. Since offence of forgery is not made out, the nature of forgery which are punishable under Section 467 and 468 of the Indian Penal Code are also not applicable.

12. Since ingredients of main offences are not made out the petty offences under Section 323 and 504 which are offshoot of the main allegation cannot be allowed to be proceeded with to harass the petitioners in view of the pendency of the civil litigation between the parties for the same cause.



13. It appears from the record that identical complaint petition was brought by the same opposite party no. 2 vide complaint case No. 65 of 2003.

14. Considering the fact that offences for which cognizance has been taken are either not made out against the petitioners or are of trivial nature and ornamental to reckon vengeance and pressurize in the civil dispute, hence, the continuance of the criminal proceedings would amount to abuse of the process of court.

15. Accordingly, the impugned order and entire criminal prosecution stands quashed and this application stands allowed.

(Birendra Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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