

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.774 of 2019

Arising Out of COMPLAINT CASE No.-1992 Year-2018 Thana- PATNA District- Patna

Lakshuman Rai Son of Late Moti Rai, Resident of Village- Nathupur
Paithani, Police Station-- Beur, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Deptt. of Law and Justice, New Secretariat, Patna.
2. Gopal Rai S/O late Shyam Nandan Rai R/O Mohalla- Devi Mandir Road Punaichak, P.O. and P.S.- Shastrinagar, Distt.- Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Gajendra Pratap Singh, Adv.
For the State	:	Mr. Sunil Kumar Mandal, SC-3
		Mr. Bipin Kumar, A.C. to SC-3
		Mrs. Neelam Kumari, A.C. to SC-3
For the Respondent No.2 :		Mr. Patanjali Rishi, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 02-09-2019

Heard Mr. Gajendra Pratap Singh, learned advocate for the petitioner, Mr. Sunil Kumar Mandal, learned advocate for the State of Bihar and Mr. Patanjali Rishi, learned Advocate for the respondent no.2 Gopal Rai.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for quashing the entire proceedings of Complaint Case No. 1991(c) of 2018.

3. It is submitted by the learned counsel for the petitioner that on perusal of the complaint it would appear that a



case, which is predominantly of civil nature has been given colour of a criminal case with ulterior motive.

4. He contended that the petitioner is the legal heir of late Moti Rai, who got his name mutated after following due course of law in all the Government records. Since 1997, he is paying rent to the Government regularly in respect of the property inherited by him. His aunt Most. Mangni Devi has sold her share of land vide deed no. 2093 dated 17.09.1997 wherein it is clearly stipulated that partition among the petitioner and her aunt has already taken place and the petitioner is the only son of late Moti Rai.

5. He urged that with ulterior motive the respondent no.2 has raised objection before the Land Acquisition Officer, Patna in respect of the compensation awarded in lieu of the land acquired by the State. The respondent no.2 has also filed jamabandi cancellation case before the Additional Collector, Patna vide Jamabandi Cancellation Case No. 107 of 2017-18. He has pleaded that being the only son of late Moti Rai, after his death, on 11.12.1991, the petitioner performed all the rites and rituals. The death certificate of late Moti Rai was issued by the Municipal Corporation on 11.12.1991 wherein name of the petitioner is mentioned as son.



6. In the supplementary affidavit filed by the petitioner, it has been stated that the petitioner has three sisters, namely, Balkeshiya Devi, Ramkeshiya Devi and Samfula Devi, who were married during life time of their father. His mother Fuljhari Devi alias Tilkeswari Devi had pre-deceased his father.

7. In support of the aforesaid contentions, he has brought on record xerox copy of the death certificate issued by the Patna Municipal Corporation dated 11.12.1991, xerox copy of the family tree issued by the Circle Officer, Phulwarisharif, Patna and xerox copy of the order passed in Mutation Case No. 541/7 of 1997-98 along with rent receipts.

8. The State and the respondent no.2 have filed their respective counter affidavits.

9. In the counter affidavit filed on behalf of the State, it is stated that there is dispute between the complainant and the petitioner with regard to title of the land in question. The land in question was acquired vide L.A. Case No. 46 of 2013-14 for construction of N.H.- 83 Patna Gaya Dobhi Four Lane and 80% of the compensation amount has been paid to the petitioner.

10. In para 11 of the counter affidavit, it has been stated that an objection was raised by Gopal Rai and Krishnandan Singh over the claim of compensation. Accordingly, vide order dated



10.08.2019 the matter has been referred under Section 3H(4) of the N.H. Act and a direction has been issued to send the records of the case to the Special Land Acquisition Judge-I, Civil Court, Patna for needful as the case involves complex question of title, which is beyond the jurisdiction of the District Land Acquisition Officer, Patna.

11. Mr. Sunil Kumar Mandal, learned counsel appearing for the State submitted that after the reference was made to the Special Land Acquisition Judge-I, Civil Court, Patna, the case is still pending adjudication before the Special Land Acquisition Judge-I, Patna.

12. In the counter affidavit filed on behalf of the respondent no.2, it has been pleaded that there is specific allegation in the complaint that the petitioner acted in collusion with other accused persons and got his name entered in the government record as the son of late Moti Rai on the basis of forged and fabricated documents.

13. Mr. Patanjali Rishi, learned counsel appearing for the respondent no.2 submitted that since the allegation made in the complaint would clearly attract the ingredients of the offences punishable under Sections 419 and 182 of the Indian Penal Code (for short 'IPC'), no case for quashing the criminal proceeding is



made out. He pleaded that the defence taken by the petitioner even before the explanation of substance of accusation cannot be made a ground for quashing of the criminal prosecution. He argued that the receipt of register of cremation, which has been issued without any inquiry, cannot be treated as the death certificate of Late Moti Rai. The death certificate so issued has not been affirmed by the Patna Municipal Corporation in response to a query made under the Right to Information Act vide letter no.551 dated 18.01.2018. He contended that the order of mutation in favour of the petitioner is the subject matter of the instant criminal prosecution against the petitioner. Hence, it cannot be said that the dispute is predominantly of civil nature.

14. The respondent no.2 has stated in his complaint that his mother Devanti Devi was daughter of Late Moti Rai and Late Tilkeshwari Kuer. Tilkeshwari Kuer and Moti Rai had two daughters only, namely, Vasmatiya Devi and Devanti Devi. Late Moti Rai had no second wife. After the death of Moti Rai and Tilkeshwari Kuer, the accused persons in conspiracy with each other prepared documents showing the name of the petitioner Laxman Rai as son of Moti Rai and Tilkeshwari Kuer and on the basis of those documents Laxman Rai took possession of the entire land of Late Moti Rai.



15. The complainant has further alleged that Laxman Rai illegally received Rs.7,52,68,616/- in conspiracy with accused nos. 4 to 10, namely, Priteshwar Prasad, District Land Acquisition Officer, Patna, Shahid Parwej, Additional District Land Acquisition Officer, Patna, Shiv Ranjan, Additional District Land Acquisition Officer, Patna, Gyananand, Revenue Officer, Kashyap, Assistant-cum-Nazir, District Land Acquisition Office, Patna, Vikas Bhatt, Assistant, District Land Acquisition Office, Patna and Arvind Kumar, Assistant, District Land Acquisition Office, Patna as compensation for the land acquired by the State for construction of N.H.-83 Patna- Gaya- Dobhi Four Lane claiming himself to be son of Moti Rai and Tilleshwari Kunwar. He has also sold 13,610 sq.ft land to one Shanti Devi for Rs.2 lakhs. The complainant raised objection, but no action was taken by the Officers and assistants of the Land Acquisition Office.

16. The complainant has further alleged that after Moti Rai died, the accused Laxman Rai got his name mutated on the basis of forged and fabricated document vide Mutation Case No. 154 of 1997-98. In spite of objection raised by the complainant, no action was taken against the accused persons. The genealogical table prepared by Laxman Rai is not genuine.



17. He has further alleged that on 24.11.2017, he had filed an application before the Circle Officer, Phulwarisharif, Patna along with evidence to show that the petitioner Laxman Rai is not the son of Moti Rai and Tilkeshwari Kunwar, but no action was taken on his application.

18. On the basis of the aforesaid complaint, the learned Magistrate took cognizance of the offence and recorded the statement of the complainant on oath wherein he has supported the allegations made in the complaint.

19. In course of inquiry conducted under Section 202 of the Code of Criminal Procedure (for short 'Cr.P.C'), three witnesses were examined whereafter the learned Magistrate issued processes under Section 204 of the Cr.P.C.

20. It would be relevant to note that cognizance has been taken of the offences punishable under Sections 419 and 182 of the IPC only.

21. Section 419 of the IPC provides punishment for cheating by personation whereas Section 182 of the IPC relates to an offence of giving false information with intent to cause public servant to use his lawful power to the injury of another person.



22. The petitioner has contended that a predominantly civil case has been given colour of a criminal case with ulterior motive.

23. In this regard, it would be of salience to note certain facts admitted even by the complainant, which are as under :-

- (a) Land of late Moti Rai was acquired by the State in L.A. Case No. 62 of 2012 and L.A. Case No. 46 of 2013-14.
- (b) The compensation of over seven crores rupees in respect of the acquisition made was paid to the petitioner.
- (c) After the death of Moti Rai, name of the petitioner has been mutated in the government register by the Circle Officer concerned.
- (d) The petitioner sold 10 katha land for consideration of money to one Shanti Devi on 20.11.2017 through registered sale deed.

24. The grievance of the complainant is that mutation was made in the name of the petitioner on the basis of forged papers. His further grievance is that the accused persons connived together and illegally paid compensation against acquisition of land of late Moti Rai to the petitioner.

25. Admittedly, Moti Rai died on 11.12.1991. A report of Patna Municipal Corporation was made on the same day as would



appear from the receipt granted by the Patna Municipal Corporation, as contained in Annexure-3 to the application. The Circle Officer, Phulwarisharif, Patna has issued a certificate in respect of the family members of late Moti Rai. The family list certificate granted by the Circle Officer on 26.12.2018 would also suggest that Moti Rai had one son Laxman Rai and three daughters, namely, Balkeshiya Devi, Ramkeshiya Devi and Samfula Devi.

26. The mutation order dated 24.08.1997, as contained in Annexure-5 would show that after the death of late Moti Rai, his landed properties were mutated in the name of the petitioner Laxman Rai. The petitioner has also annexed the rent receipts issued from time to time by the government officials in the name of the petitioner in respect of the properties in question.

27. Though learned counsel for the complainant has disputed the certificate of list of family on the ground that a duplicate certificate of family list was also granted by the Circle Officer concerned, he has not disputed issuance of the mutation order or rent receipts in favour of the petitioner.

28. The mutation order and rent receipts would prima facie establish that after the death of Moti Rai, upon enquiry conducted by the authorities of the Revenue Department, the



change of title in the revenue records for the concerned property was made in the name of the petitioner. The mutation order is of the year 1997. The same was not challenged by the complainant for about two decades. Later on, the said order has been challenged by way of filing Jamabandi Cancellation Case No. 107 of 2017-18. The said case is yet to be decided.

29. It is reiterated that part of the land in question was acquired in L.A. Case No. 46 of 2013-14 for construction of N.H. 83 Patna Gaya Dobhi Four Lane and 80% of the compensation amount was paid to the petitioner by the authorities of the State. The presumption is that the compensation was paid to the petitioner after due inquiry.

30. After the payment of 80% of compensation amount when an objection was raised by the complainant and one Krishnanandan Singh, the matter has been referred under Section 3H(4) of the N.H. Act and the same is pending before the civil court as the case involves complex question of title.

31. Since the property in question was already mutated in the name of the petitioner and he has executed sale deed in his own name, the ingredients of the offence of cheating by personation punishable under Section 419 of the IPC are clearly not attracted. Similarly, in view of the admitted documents on record, unless



contrary is proved, it cannot be said that the petitioner gave any information to any public servant knowing the same to be false. The dispute relating to entry of name in the revenue records cannot be adjudicated by a criminal court. Hence, the prosecution of the petitioner under Section 182 of the IPC would also be an abuse of the process of the court under the facts and circumstances of the case.

32. Moreover, the offence punishable under Section 182 of the IPC prescribes punishment which may extend to six months or with fine which may extend to one thousand rupees, or both.

33. The said provision reads as under :-

“182. False information, with intent to cause public servant to use his lawful power to the injury of another person.—Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend



to six months, or with fine which may extend to one thousand rupees, or with both.”

34. The essential ingredients for attracting the said offence are :-

- (a) Giving of an information to a public servant;
- (b) The information must have been known or believed to be false by the giver;
- (c) The information must have been given with an intention to cause or knowing it to be likely to cause (a) such public servant to do not to do anything if the true state of facts respecting which such information is given were known by him, or (b) to use the lawful power of such public servant to the injury or annoyance of any person.

35. To constitute an offence under Section 182 of the IPC, the information given to a public servant should not only be false in fact but it must be false to the knowledge or to the belief of the informant.

36. As seen above, the said Section provides for punishment of six months or with fine, which may extend to Rs.1000/- or both.

37. Section 468 of the Cr.P.C bars taking cognizance after lapse of the period of limitation.



38. Section 468(2)(b) provides that no court shall take cognizance after one year if the offence is punishable with imprisonment for a term not exceeding one year.

39. In the instant case, the main allegation against the petitioner is that he succeeded in getting a favourable mutation order on the basis of some forged and fabricated papers. The mutation order was passed in the year 1997 whereas the complaint has been filed in the year 2018. Therefore, the order taking cognizance of the offence by the Magistrate concerned is certainly beyond the period of limitation. There was no application for extension of the period of limitation by the complainant before the jurisdictional Magistrate.

40. The summoning order has been brought on record by the learned counsel for the respondent no.2 in his counter affidavit, which is marked as Annexure-R2/1. The same would suggest that the limitation in taking cognizance of the offence was not condoned by the Magistrate concerned. There was no application for condoning the delay in taking cognizance in terms of Section 473 of the Cr.P.C by the complainant. In that view of the matter also, the learned Magistrate could not have proceeded against the petitioner under Section 182 of the IPC.



41. At this stage, learned counsel for the complainant submitted that the complaint was filed also for the offences punishable under Sections 187, 188, 182, 219, 218, 192, 406, 420, 467, 468, 471 and 120-B of the IPC, but the learned Magistrate took cognizance of the offences punishable under Sections 419 and 182 of the IPC only.

42. Be that as it may, having regard to the totality of the facts and circumstances of the case, I am of the opinion that the case is predominantly of civil nature. The issue of right, title and possession of property cannot be adjudicated by a criminal court. The challenge made to the mutation order is yet to be decided. The petitioner is claiming his peaceful possession for over 20 years over the property in question. The inquiry conducted before payment of compensation in land acquisition proceeding or before passing the mutation order have found the petitioner to be the legal heir of late Moti Rai.

43. In that view of the matter, at this stage, I am of the opinion that allowing the prosecution of the petitioner to continue would amount to an abuse of the process of the court.

44. Accordingly, the application is allowed. Complaint Case No. 1992(c) of 2018 and the entire proceedings arising out of the said complaint are hereby quashed.



45. The application is allowed.
46. It is needless to say that any observation made in the present proceeding would have no bearing on any other proceeding between the parties except the criminal complaint herein.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12-09-2019
Transmission Date	12-09-2019

