

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41482 of 2013

Arising Out of PS.Case No. -987 Year- 2011 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

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1. Savitri Devi @ Savitri Singh, wife of late Baidyanath Prasad Singh
2. Dheeraj Kumar, son of late Baidyanath Prasad Singh
Both resident of Gangotri Apartment, Flat No. 303, Exhibition Road, Police Station
- Gandhi Maidan in the District - of Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Mithilesh Kumar Sharma, son of late Raghav Narayan Sharma, permanent
resident of village - Ajmatpur, Police Station - Rajapakar in the district of
Vaishali at present residing at Radha Niwas, P.O. - G.P.O., P.S. - Kotwali, S.P.
Verma Road, Patna - 800001

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anshuman Singh, Advocate.

For the Opposite Party/s : Mr. Arun Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 18-04-2013

1. This application has been filed for quashing the
order dated 1.3.2013 passed by the learned Judicial Magistrate, 1st
Class, Vaishali, in Complaint Case No. 987 of 2011, T.R. No. 2435 of
2011 by which summons have been ordered to be issued against the
petitioners to face trial for the offences under Sections 379 and 427 of
the Indian Penal code.

2. Heard learned counsel for the petitioners and the
State.

3. It has been submitted that petitioner No. 1 is own



sister of the complainant whereas petitioner No. 2 is son of petitioner No. 1.

4. In the statement of complainant under Section 200 Cr. P.C. he has admitted that the land in dispute has been purchased by his father in the name of his sister Savitri Devi @ Savitri Singh (petitioner No. 1). In the complaint petition also it has been mentioned that there is dispute with regard to ancestral land between the parties.

5. The counsel for the petitioners has submitted that a Title Suit has been filed by the complainant (opposite party No. 2) himself for the same land vide Title Suit No. 203 of 2011, which is pending in the court of Sub Judge-V, Hajipur. In that case Injunction Petition was also filed by the complainant, which was rejected by the learned Sub Judge-V, Hajipur vide order dated 25.4.2012.

6. Learned counsel for the petitioner has further submitted that the order of cognizance is bad in law because the matter is purely civil dispute. It has further been submitted that from Solemn Affirmation of the complainant and statement of the witnesses, no ingredient of offence under Sections 379 and 427 of the Indian Penal Code is made out.

7. Learned counsel for the petitioner has relied upon a decision of the Supreme Court ***reported in 2005(3) SCC, Page 670 (Suresh Vs. Mahadevappa Shivappa Danannava and Anr.)*** and has



argued that the allegation in the complaint petition is purely civil in nature and does not *prima facie* disclose commission of alleged offence under Sections 379 and 427 of the Indian Penal Code.

8. The learned counsel for petitioner has submitted that from the supplementary affidavit filed on behalf of the petitioners, it will appear that in the year 1959 itself, the land in question (mentioned in the complaint petition) was purchased in the name of petitioner No. 1. The sale deed has been brought on record by the petitioners in the supplementary affidavit vide Annexure 10. The evidence of the complainant opposite party No. 2 has been recorded under Section 244 Cr. P.C., wherein, he in his cross-examination has stated that the land has been purchased in the name of petitioner No. 1 by his father by a registered sale deed in the year 1959.

9. In such circumstances, after looking into the facts of this case as well as Solemn Affirmation of complainant and statement of two witnesses recorded during enquiry, it appears that the dispute is purely civil in nature. Title Suit has already been filed by the complainant for the aforesaid dispute which is pending in the court of Sub Judge-VI, Hajipur, vide Title Suit No. 203 of 2011.

10. Therefore, continuation of criminal proceeding against the petitioners is totally abuse of the process of law.

11. Accordingly, the entire proceeding against the



petitioners including the order dated 1.3.2013 passed by the Judicial Magistrate, 1st Class, Vaishali, in connection with Complaint Case No. 987 of 2011, T.R. No. 2435 of 2011, is hereby quashed.

12. This Criminal Miscellaneous petition is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	01.05.2017
Transmission Date	01.05.2017

