

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 47729 of 2014

Arising Out of Complaint Case No.-661 Year-2012 Thana- GAYA COMPLAINT CASE
District- Gaya

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1. Jahan Ara Bibi, wife of Ashmat Bari Khan, resident of Khajuria, P.S. Baki Bazar, District- Gaya, Bihar.
 2. Gulsharah Bibi wife of Yunus Khan, aged about- 49 years, resident of Mohall-Lohartoli, Sherghati, at present Resident of M-471, Vikash Nagar, Kusmunda, District- Korba, Chhatisgarh.
 3. Umbul Khanam, Wife of Samshul Arfin, resident of Khajuria, P.S. Baki Bazar, District- Gaya, Bihar.
 4. Farzana Khanam Wife of Master Ashraf Ali, age 38 years, resident of Bhairiopatti, P.S. Bilki Chak, District- Darbhanga.
 5. Safira Khanam, Wife of Minhaz Khan, age 42 years, resident of Jainagar, P.S. Jainagar, District- Kodarma, State- Jharkhand.
 6. Md. Ayub Ali @ Kamar, Son of Samshul Arfin.
 7. Asraf Ali Fatmi @ Sahnu, Son of Ashmat Bari Khan, both are resident of Khajuria, P.S. Bakki Bazar, District- Gaya, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Naushad Khan, Son of Shahbaz Bahadur Khan, resident of B/95 Vikash Nagar, Kusmunda, P.S. Kushmunda, District- Korba, State- Chhattisgarh.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rashid Izhar, Advocate
For the Opposite Party No. 2	:	Mr. Md. Javed Zafar Khan, Advocate
For the State	:	Mr. Md. Arif, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 16-04-2019

Heard learned counsel for the petitioners; learned APP
for the State and learned counsel for the opposite party no. 2.



2. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

“That this application is being filed under inherent jurisdiction of this Hon’ble Court for quashing of the order dated 25.04.2013, passed by Learned Rajesh Prasad, judicial magistrate 1st class, Sherghati, Gaya whereby cognizance under section 323,427, 120(b), 420, 467, 468 of the Indian Penal Code is taken against the petitioners in Complaint Case no. 661/2012 which was registered under section 323, 427, 120(b), 420, 467, 468 of the Indian Penal Code and prosecution of Complaint Case no. 661/2012 pending before the learned Judicial magistrate 1st class Sherghati, Gaya.”

3. In the complaint case filed by the opposite party no. 2, who is a co-sharer, allegation is with regard to alienating ancestral land for which no formal partition has been made between the parties. Learned counsel for the petitioners submitted that a purely civil dispute has been given the colour of criminal case which is an abuse of the process of the Court. It was submitted that the petitioners have not alienated any land which was beyond their share and still sufficient ancestral land has been left out from which the share of the opposite party no. 2 can easily be met. It was submitted that all the brothers and sisters are on one side except for the opposite party no. 2, who is creating problem and



further that the petitioners are ready for compromise but the opposite party no. 2, is not agreeable to it.

4. Learned APP submitted that the opposite party no. 2 admittedly is a co-sharer and without partition, ancestral property having been alienated, definitely would amount to fraud, cheating etc.

5. Learned counsel for the opposite party no. 2 submitted that never he has been called for any negotiation or settlement by the petitioners and, thus, the allegation that he is unwilling is not correct. Learned counsel further submitted that the petitioners were fully aware that the lands they were alienating were common joint ancestral property and, thus, it cannot be said that they were unaware or by mistake had committed the act of selling such land. It was further submitted that even in the sale deeds, it has not been stated that the property were joint and they were allotted in the share of the petitioners and, thus, being the owner they had a right to execute such sale deed. Learned counsel submitted that this clearly shows that there was criminal intention on the part of the petitioners and had the opposite party no. 2 not become aware of such fact, the petitioners would have got away with such act.



6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.

7. The Court below, from the materials before it, has taken cognizance which, at this stage cannot be said to be unwarranted or without any basis. As has rightly been pointed out by learned counsel for the opposite party no. 2, not stating the correct facts while alienating the land and also not being the full and absolute owner of the lands in question, until the same is duly partitioned between the co-sharers, it cannot be said with certainty that the petitioners are innocent. Thus, all the more reason why a full fledged trial is needed in the present case. Moreover, the Court would observe that based on a particular set of facts there may be both civil and criminal remedy available to the person aggrieved. Only because there may be civil remedy available, no criminal proceeding would lie, is an erroneous proposition of law. In this context, the Court would refer to the Judgment of the Hon'ble Supreme Court in **Vijayander Kumar v. State of Rajasthan** reported as **(2014) 3 SCC 389**, where at paragraphs no. 10, 11 and 12, it has been held as under:

“10. Contra the submission advanced on behalf of the appellants, the learned counsel for respondent 2 has submitted that there is no merit in the contention advanced on behalf of the appellants



that the FIR discloses only a civil case or that there is no allegation or averment making out a criminal offence. For that purpose he relied upon the judgment of the High Court rendered in the facts of this very case Vijayander Kumar v. State of Rajasthan, already noted earlier.

11. No doubt, the views of the High Court in respect of averments and allegations in the FIR were in the context of a prayer to quash the FIR itself but in the facts of this case those findings and observations are still relevant and they do not support the contentions on behalf of the appellants. At the present stage when the informant and witnesses have supported the allegations made in the FIR, it would not be proper for this Court to evaluate the merit of the allegations on the basis of documents annexed with the memo of appeal. Such materials can be produced by the appellants in their defence in accordance with law for due consideration at appropriate stage.

12. The learned counsel for the respondents is correct in contending that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a criminal offence or not. This proposition is supported by several judgments of this Court as noted in para 16 of the judgment in Ravindra Kumar Madhanlal Goenka v. Rugmini Ram Raghav Spinners (P) Ltd.”

8. In the present case, the Court finds that there is sufficient material for a cause of action accruing to the opposite party no. 2 to maintain criminal proceeding based on the same facts for which he may also have a remedy on the civil side for



getting his due with regard to the properties which have been alienated by the petitioners, who are co-sharers.

9. For reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

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