

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.339 of 2015

Arising Out of Case No.-3010 Year-2013 Thana- KATIHAR COMPLAINT CASE District-
Katihar

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Sudhir Kumar Mandal son of late Devnandan Mandal resident of village
Pirganj, P.S. Korha, District- Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Sunil Kumar Mandal son of late Devnandan Mandal resident of village-
Pirganj, P.S. Korha, District- Katihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar Jha with Mr. Bhola Prasad, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 05-04-2019

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. Despite service of notice on opposite party no. 2 and
name of learned counsel also printed in the cause list, nobody
appeared when the case was taken up and heard. Even on
22.02.2019, when the case was taken up, nobody had appeared on
behalf of the opposite party no. 2.

3. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 for the following relief:

*“That this is an application for quashing the order dated
9-9-2014 passed by the Judicial Magistrate, 1st Class,
Katihar in Complaint Case No. 3010/2013 whereby the
learned Magistrate has taken cognizance for offences*



under sections 417,471 of the Indian Penal Code and summoned the petitioner.”

4. The opposite party no. 2 has filed the complaint case against the petitioner, who is his full brother, alleging that the part of the land allotted in the share of the opposite party no. 2 in a partition before the *panches* was sold by the petitioner in favour of three other co-accused.

5. Learned counsel for the petitioner submitted that the entire allegation is false and frivolous. It was submitted that even though the entire chunk of land was self acquired by the petitioner which he had purchased through registered sale deed, still he had agreed to partition of the same and accordingly, the lands were apportioned between the petitioner and the opposite party no. 2. It was submitted that in the partition, the portion of the land which was allotted in the share of the opposite party no. 2, had a built up structure of three rooms and in lieu of the same, the opposite party no. 2 had to pay to the petitioner Rs. 2,75,000/- within 12 months. Learned counsel submitted that when the petitioner was insisting for payment of the amount, to prevent him from doing so, this false case has been instituted. It was submitted that from the partition before the *panches* and the sale deeds executed by the petitioner, it would be clear that portion of only those lands have been transferred by the petitioner which have been allotted to him.



Learned counsel submitted that the copy of the partition before the *panches* and the sale deeds are part of the lower court records which have been called for by the Court.

6. Learned A.P.P., upon going through the records, submitted that the contention of learned counsel for the petitioner is correct.

7. Having regard to the aforesaid, the Court finds that nothing remains as the claim of the opposite party no. 2 to the land in question stands falsified from the documents which have been referred to in the complaint itself. Thus, the present case clearly is an abuse of the process of the Court having been filed for oblique reasons which cannot be allowed to proceed.

8. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 3010 of 2013 pending before the Court below at Katihar, including the order dated 09.09.2014, by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

9. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J)

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