# IN THE HIGH COURT OF JUDICATURE AT PATNA
**CRIMINAL MISCELLANEOUS No.18904 of 2015**

Arising Out of PS. Case No.-82 Year-2014 Thana- KARAI PARSURAI District- Nalanda

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1. Indu Devi, Wife of Anil Sao
2. Ram Chandra Prasad, Son of Late Ram Baran Mahto
3. Anil Sao, Son of Sri Bakhori Thathera
4. Raj Ballabh Prasad, Son of Late Bhukhlal Choudhary, All resident of Village / Mohalla - Karai Parsurai, P.S. - Karai Parsurai, District - Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Azad Prasad, Son of Late Ram Lakhan Sao, Resident of Village / Mohalla - Karai Parsurai, P.S. - Karai Parsurai, District - Nalanda.

... ... Opposite Party/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Rajendra Prasad, Sr. Advocate<br>Mr. Ritesh Kumar, Advocate |
| For the O.P. No. 2 | : | Mr. Anil Kumar Singh, Advocate |
| For the State | : | Mr. Jharkhandi Upadhyay, APP |

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**
**ORAL JUDGMENT**
**Date : 16-08-2019**

Heard learned counsel for the parties.

**2.** The petitioners have been arrayed as accused in Karai Parsurai P.S. Case No. 82 of 2014. After investigation, the police submitted final form stating that the matter is of civil dispute. However, the learned court below differed with the police report and took cognizance by the impugned order dated 05.10.2014/16.12.2014 for offences under Sections 420, 467, 468, 120B and 504/34 of the Indian Penal Code.

**3.** According to FIR, which was registered on the basis of complaint case filed initially by opposite party no. 2, the mother of opposite party no. 2-Budhani Devi had purchased 74 decimals of land from Ram Baran Mahto through registered sale deed dated 21.08.1961. After death of mother, opposite party no. 2 and his brother Nawal Kishore Prasad were in possession of the same as owner thereof. However, accused Ram Chandra Prasad, petitioner no. 2, who is son of Late Ram Baran Mahto, aforesaid executed a registered sale deed on 27.06.2013 in favour of other petitioners in respect of 32 decimals of the land out of 74 decimals. When the complainant went to complain about the aforesaid act committed by the petitioners, petitioner no. 2 Ram Chandra Prasad allegedly abused and threatened to assault. Thereafter, all allegedly committed assault and theft as well.

**4.** Submission of the learned counsel for the petitioners is that the matter is of pure civil dispute. For the same grievance, the informant and his brother have filed Title Suit No. 52 of 2013 in the Court of learned Sub-Judge, Hilsa with prayer that their title be declared on the suit land and the defendant be restrained from making any transfer deed in respect of the suit land by an order of temporary injunction.

**5.** Next contention is that no offene of cheating is made out against the petitioners for the simple reason that the accused persons, who have purchased the property from a non-title holder i.e. by petitioner no. 2 Ram Chandra Prasad, herein, in fact, were cheated in the transaction because they had paid consideration money to petitioner no. 2 Ram Chandra Prasad and the complainant was not cheated in any way because the law is well settled that no one can transfer a better title than he himself possesses.

**6.** Submission is that the words 'forgery' has been defined in Section 463 of the Indian Penal Code and most important ingredient of the offence is making of any false document. What is making a false document is defined under Section 464 of the Indian Penal Code. Since, there is no allegation of making of a false document according to law, the offence of forgery is not made out against the petitioners. In the circumstance, the nature of forgery which are punishable under Sections 467 and 468 of the Indian Penal Code are also not attracted in the facts and circumstances of this case.

**7.** Learned counsel for opposite party no. 2 submits that once the learned court below has taken cognizance, at this stage, the meticulous appreciation of evidence or probable defence of the accused cannot be looked into. Moreover, pendency of civil suit cannot be a ground to quash the criminal proceeding if the ingredients of the offences alleged are apparently made out.

**8.** I have carefully gone through the contents of the plaint of Title Suit No. 52 of 2013 brought by opposite party no. 2

and his brother against petitioner no. 2 Ram Chandra Prasad, the vendor of other petitioners and against the sons of Ram Chandra Prasad.

**9.** The perusal of the FIR does not show that the petitioners deceived to the complainant fraudulently or dishonestly to deliver any property to any person. Hence, the act of petitioner no. 2 Ram Chandra Prasad does not come within the definition of the word 'cheating' under Section 415 of the Indian Penal Code which reads as follows:-

> "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."
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> "The explanation to the section says a dishonest concealment of facts is a deception within the meaning of this section".

**10.** The requirement to prove the charge under the aforesaid section was considered by the Hon'ble Supreme Court in **Md. Ibrahim** V. **The State of Bihar** reported in **2009(4) PLJR (SC) 99** and in para 13 of the judgment, the Hon'ble Supreme Court observed as follows:-

> "13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived: (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security)."

**11.** In **Hridaya Ranjan Prasad Verma** v. **State of Bihar** reported in **2000(4) SCC 168**, the Hon'ble Supreme Court in para 15 of the judgment observed as follows:-

> "15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but

> for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

**12.** Evidently the act alleged against petitioner no. 2 Ram Chandra Prasad in executing a registered sale deed in favour of other petitioners does not amount to inducement to the complainant or deception to the complainant. If the purchaser from petitioner no. 2 Ram Chandra Prasad would have approach the Court with the grievance that petitioner no. 2 Ram Chandra Prasad transferred the property which was not owned by him, the matter would have been different.

**13.** Section 463 of the Indian Penal Code defines the term 'forgery' which starts with the words "whoever makes any false document "………..".

**14.** "Making of false document" is defined in Section 464 of the Indian Penal Code which reads as follows:

"464. Making a false document.—[A person is said to make a false document or false electronic record—

First.—Who dishonestly or fraudulently —

(a) makes, signs, seals or executes a document or part of a document;
(b) makes or transmits any electronic record or part of any electronic record;
(c) affixes any [electronic signature] on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],

with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed <u>by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or</u>

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]"

**15.** This case is, apparently, not covered by clause secondly and thirdly and no case under clause first is made out because it is not a case that petitioner no. 2 Ram Chandra Prasad signed on the document by the authority of any person knowingly that, that person had not authorized him to sign the document. Apparent allegation is that petitioner no. 2 Ram Chandra Prasad had signed the document in his own capacity claiming the property as his own, though according to the complainant, the property was of the complainant. Therefore, the offence under Section 467 of the Indian Penal Code, which relates to forgery of valuable security etc. or Section 468 of the Indian Penal Code which relates to forgery for the purpose of cheating are apparently not made out because forgery is itself not made out in the case, therefore, purpose of forgery is immaterial. If the ingredients of main offences are not made out asking the petitioners to face trial for the offshoot of the main offence, which is of trivial nature i.e. under Section 504 of the Indian Penal Code, would amount to abuse of the process of the Court especially when one of the requirements, to prove the charge under Section 504 of the Indian Penal Code that provocation given by commission of insult was such which would have cause the complainant to break the public peace or to commit any other offence, is missing.

**16.** It has been settled by a catena of decisions that the civil disputes cannot be allowed to be resolved through criminal case. This case is out and out a case of civil dispute. Hence, criminal prosecution of the petitioners amounts to abuse of the process of the Court.

**17.** For this reason coupled with the facts that ingredients of the offences for which cognizance has been taken are apparently not made out in this case. The impugned order passed against the petitioners is hereby quashed and this application is allowed.

**(Birendra Kumar, J)**

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| **AFR/NAFR** | A.F.R. |
| **CAV DATE** | N.A. |
| **Uploading Date** | 22.08.2019 |
| **Transmission Date** | 22.08.2019 |