

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 5735 of 2015

Arising Out of P.S. Case No.-254 Year-2007 Thana- BIRAUL District- Darbhanga

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1. Gopal Mukhia, Son of Raj Narayan Mukhia.
 2. Nand Kumar Mukhia Son of Fulo Mukhia.
 3. Parmeshwar Mukhia Son of Ram Bahadur Mukhia.
All resident of Village Changwara Tola Afjala, P.S. Biraul, District Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Tetari Devi Wife of Fulo Mukhia, resident of Village Changwara, Tola Afjala, P.S. Biraul, District Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Choudhary and Mr. Shailendra Kumar Jha, Advocates
For the Opposite Party/s	:	None
For the State	:	Mr. Binod Kumar No. 3, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 15-05-2019

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

2. Despite valid service of notice on opposite party no.
2, nobody appeared when the matter was taken up and heard.

3. The petitioners have 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 19.11.2014 passed by learned
Additional District Judge II, Benipur in Cr.*



Revision no. 79/2012 by which he has dismissed the revision preferred by the petitioners against the order dated 8.11.2012 passed by Judicial Magistrate Biraal at Benipur in TR No.666/12 as well as order dated 8.11.2012 passed by Judicial Magistrate Biraal at Benipur in TR No. 666/12 arising out of Biraal P.S. Case No. 254/07 by which the learned Magistrate dismissed the discharge petition preferred by the petitioners.”

4. As per the complaint filed by the opposite party no. 2 before the Sub Divisional Judicial Magistrate, Biraal, which was sent to the police resulting in institution of Biraal PS Case No. 254 of 2007, the petitioner no. 1 is the person in whose favour it is alleged that land belonging to the opposite party no. 2 had wrongly been transferred by another co-accused, who is not a petitioner in the application, whereas the allegation against the petitioner no. 2 is that he was the identifier on the sale deed and against the petitioner no. 3 is that he was the witness to the sale deed in such transaction.

5. Learned counsel for the petitioners submitted that the role of the petitioners no. 2 and 3 is restricted to being the identifier and witness on the sale deed and their only responsibility in law was to identify the persons who were signatories on the deed the deed being executed, but nothing beyond that. With regard to petitioner no. 1, it was submitted that he is the purchaser from the other co-accused and even if it is accepted that there may



be some genuine dispute relating to right and title of the land in question, the other co-accused being a coparcener in the properties in question, having registered the sale deed, if any liability would rest, the same would be restricted only to the other co-accused and not the petitioner no. 1. However, learned counsel submitted that the sons of the opposite party no. 2 had filed Title Suit (Partition) No. 41 of 2008, in which by judgment dated 23.12.2014, the sale made by the other co-accused in favour of petitioner no. 1 has been upheld. Learned counsel submitted that the husband of the opposite party no. 2 is also the father of the other accused in the case but from the first wife. It was submitted that after the death of the first wife, the husband of the opposite party no. 2 performed second marriage with her and he divided the lands among the two branches, in which certain piece of lands were given to the opposite party no. 2 and the rest were given to the son from the first wife i.e., the person from whom the petitioner no. 1 has got the sale registered and who is the other accused in the case. It was submitted that the sons of the opposite party no. 2 having filed Partition suit in which the sale deed in the present case was also a subject matter and relief was sought to declare it void, and as per the judgment delivered on 23.12.2014 by the IIInd Additional District Judge, Benipur, the merits of the matter also go to show



the falsity of the criminal case. Further, learned counsel submitted that in any view of the matter, the same relating to a property dispute is purely civil in nature for which criminal proceeding is an abuse of the process of the Court. Learned counsel submitted that the petitioners cannot be fastened with any criminal liability as they are mere purchaser, identifier and witness on the sale deed and there is no allegation against them that they had committed any criminal offence.

6. Learned APP submitted that in view of the materials before the Court, cognizance has been taken. However, on a query of the Court as to how any criminal offence is made out, especially with regard to present petitioners and that the matter relating to dispute of apportionment between coparceners and the same having been adjudicated in a formal civil proceeding resulting in judgment dated 23.12.2014, in which the present sale deed has been held to be valid, any criminal offence can proceed, at least against the petitioners; learned APP fairly submitted that the same cannot proceed.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.



8. As has rightly been submitted by learned counsel for the petitioners, they being the purchaser, identifier and witness on the sale deed executed by the other co-accused cannot be said to have committed any criminal offence as has been alleged by the opposite party no. 2 in which she has stated that the other co-accused had wrongly sold the land belonging to the opposite party no. 2 in favour of petitioner no. 1. Further, there is also no denial of the stand taken by the petitioners and which is also reflected in the judgment of the Court below in Title Suit (Partition) No. 41 of 2008, that the present transaction/sale deed was also part of the subject matter in the suit and that originally all the lands were owned by the husband of the opposite party no. 2, who is also the father of the transferor in the present case, who is also an accused and who is the son from the first wife of the husband of the opposite party no. 2, who herself is the second wife. Thus, once a competent Civil Court has held the sale deed in question to be valid and proper and also the fact that the allegation itself relating to wrong execution of a sale deed cannot be said to be a valid ground for launching of a criminal prosecution, much less, against the petitioners.

9. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Biraul P.S. Case No. 254



of 2007, including all subsequent orders which may have been passed by the Courts below, as far as it relates to the petitioners, stand quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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