

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1077 of 2015

Arising Out of PS. Case No.-128 Year-2011 Thana- BARHARA KOTHI District- Purnia

Birendeo Tiwary @ Biren Dev Tiwary Son of Late Kamdeo Tiwary Resident
of Village - Basudeopur, P.S. - Barhara Kothi, District - Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Prafful Ranjan Tiwari, S/o late Laxmi Narayan Tiwari, R/o Vill- Basudeopur,
P.S.- Barharakothi, District- Purnea.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. V.R.P. Singh, Mr. Arvind Kumar, Mr. Nand Kumar Singh and Mr. Yugal Kishore, Advocates
For the State	:	Mr. Bharat Bhushan, Advocate
For the Opposite Party No. 2	:	Mr. Santosh Kumar, Mr. Sanjay Kumar, and Mr. Pankaj Kumar Jha, Advocates

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH
ORAL JUDGMENT

Date : 17-04-2019

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



2. 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 of the order dated 31.03.2014 passed by the Chief Judicial Magistrate, Purnea in Barhara P.S. case no. 128 of 2011 dated 13.09.2011/GR no. 2524/11 (State Vrs. Birander Tiwary and others), whereby and whereunder he having found prima facie case under sections 420, 120(B), 504/34 of the Indian Penal Code, ordered to issue summons against the petitioner and others.”

3. The allegation against the petitioner is that despite there being a settlement/partition with regard to ancestral properties way back followed by mutation in the official Government/ revenue records in the year 1974, a portion of the land of the opposite party no. 2 has also been sold by him to third persons.

4. Learned counsel for the petitioner submitted that from the entire reading of the FIR, only a civil cause of action is made out and, thus, the present FIR is an abuse of the process of the Court. Learned counsel submitted that the land in question belonged exclusively to the grandfather of the petitioner in which no other person had share. In support thereof, he drew the attention of the Court to Annexure-2, which is a copy of the *Khatiyani*, which indicates that *Khesra* no. 1367 is in the name of



the grandfather of the petitioner who is not the common grandfather of the opposite party no. 2-complainant. Learned counsel submitted that even if it is accepted for the sake of argument that the petitioner had sold the land in excess of his share, the only remedy available to the opposite party no. 2 was to approach the civil Court of competent jurisdiction for setting right the so called wrong committed by the petitioner. It was submitted that no criminal aspect is made out from the FIR inasmuch as, the lands originally were common ancestral properties and matter of partition is an exercise which the heirs are required to go into. Learned counsel produced copy of judgment dated 25.06.2018 of a co-ordinate Bench in Cr. Misc. No. 19377 of 2014 in **Birendeo Tiwary @ Birendra Tiwary vs. State of Bihar and Anr.**, where an FIR filed against the said petitioner by the opposite party no. 2 in the present case has been set aside in which the allegations were similar.

5. Learned APP submitted that as per the averments in the FIR, a case is made out and rightly the Court below has taken cognizance.

6. Learned counsel for the opposite party no. 2 submitted that the present case discloses the act committed by the petitioner which are clearly criminal in nature. It was submitted



that once in the year 1974, a joint petition was filed by the four branches who had inherited the ancestral property from a common ancestor, late Megha Nath Tiwary, before the revenue authorities which was duly signed by the representatives of the branches of the petitioner also as well as the opposite party no. 2 and the same having resulted in an order of mutation in favour of the four branches in which only 24 decimals of *Khesra* no. 1367 have been allotted in the share of the petitioner and despite that he selling 70 decimals out of the same *Khesra* in which the share of the opposite party no. 2 was of 24 decimals, is nothing short of cheating by him. It was further submitted that even subsequently, in ceiling proceeding, the authorities in the publication made have shown only 24 decimals of land in the name of the petitioner and his co-sharers in *Khesra* no. 1367. Thus, learned counsel submitted that the petitioner being fully aware of these developments cannot plead ignorance or the matter being purely civil in nature. Learned counsel submitted that having sold the land belonging to the share of the opposite party no. 2, he has also committed criminal offence by taking money which rightly did not belong to him while selling the lands in question.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court



finds no merit in the present application. From the materials on record, which have gone unrebutted, it is clear that the grandfather of the petitioner was a signatory to a joint petition filed by the four branches of late Megha Nath Tiwary, who was the owner of the lands which were partitioned among the four branches and based upon which there was an order of mutation, in which only 24 decimals of land was allotted to the share of the petitioner whereas 24 decimals was allotted to the opposite party no. 2, out of the total area being 70 decimals and still the petitioner selling the entire 70 decimals in *Khesra* no. 1367, clearly cannot be said to be an innocent or ignorant act. This was also followed by notification of the authorities under the Ceiling Act reiterating the position that only 24 decimals of land in *Khesra* no. 1367 belonged to the petitioner side and all such orders not having been assailed, clearly it becomes an admitted and publicly known position.

8. Moreover, the law is settled that on a particular set of facts, there may be both civil and criminal offence made out, but that would not mean that once civil cause of action is available to the party aggrieved, he is precluded from moving on the criminal side. Thus, in such cases, action both on the civil as well as criminal side is equally maintainable. In the opinion of the Court, the present is one such case.



9. In this connection, 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.”



10. In the aforesaid background, the Court finds that there is no infirmity in the order under challenge which requires interference by the Court.

11. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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