

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10131 of 2015

Arising Out of PS. Case No.-61 Year-2007 Thana- ARA NAWADA District- Bhojpur

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Durgawati Devi W/o late Chandrama Singh resident of Mohalla- Pakari, P.S. Ara Nawada District Bhojpur at present in village Dehari P.S. Ayar Dist. Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sri Bhagwan Singh S/o Late Ram Balak Singh resident of Mohalla- Pakari, P.S. Ara Nawada District Bhojpur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Uday Kumar, Advocate
For the State	:	Mr. Md. Arif, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 23-04-2019

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

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 the order dated 25.11.2014 passed in Trial no. 1192/13 arising out of Ara Nawada P.S. Case no. 61/07 dated 28.3.2007 registered for the offence alleged under Sections 420, 467, 468, 120(B) of the Indian Penal Code, by Sri A. K. Manjhi, the learned judicial Magistrate 1st Class, Ara whereby and where under he has been pleased to reject the petition of discharge dated 28.11.13 filed by the petitioner and further be pleased to direct the accused persons to remain present physically on the next date.”



3. The petitioner and others have been made accused in Ara, Nawada P.S. Case No. 61 of 2007 filed by the opposite party no. 2 in which the allegation against her is of executing sale deed with regard to the land which was in the name of the wife of the informant-opposite party no. 2 and with regard to which, mutation was also made in her favour and she was paying rent for the land in question.

4. Learned counsel for the petitioner submitted that the land was ancestral and, thus, she also had a share and rightfully she has sold her share. It was submitted that if there is any dispute with regard to the share, the remedy is to file a civil suit and not a criminal case. It was further submitted that the petitioner is an old lady and the land belongs to her father-in-law.

5. Learned APP submitted that the petitioner cannot plead innocence in view of the fact that she was aware of the land not belonging to her. It was submitted that even if it is accepted, for the sake of argument, that she may be having some share in the ancestral property of her late husband, the same would not give her a right to sell any portion until exact share and the properties are demarcated by metes and bounds. It was submitted that the petitioner being aware that the land was belonging to her father-in-law, and she did not have any exclusive right or title till such time



the property was partitioned between the coparceners, having executed sale deed with regard to a specific portion of land, clearly indicates the intention to cheat, commit fraud and cause undue loss to the other co-sharers. It was further submitted that a set of facts may disclose both criminal and civil cause of action, and just because there may be a civil angle to the issue, would not preclude the party aggrieved to also invoke the jurisdiction of the Court on the criminal side. Learned APP submitted that in the present case, the opposite party no. 2 has both remedies; on the criminal side, he has a remedy to pray for punishing the petitioner for her illegal acts whereas on the civil side, he has the remedy to get the sale deed cancelled and/or seek adequate compensation for the loss suffered.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the submissions of learned APP.

7. The Hon'ble Supreme Court in **Vijayander Kumar v. State of Rajasthan** reported as **(2014) 3 SCC 389**, at paragraphs no. 10 and 12, has 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 in Vijayander Kumar v. State of Rajasthan, already noted earlier.

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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. From the aforesaid, it is clear that certain facts which reveal both civil and criminal cause of action, the criminal case cannot be said to be an abuse of the process of the Court and can proceed independently. The Court further finds substance in the contention in learned APP that from the allegations levelled in the FIR, it cannot be said that no criminal offence is made out. Moreover, the parties shall have ample opportunity to prove their innocence, at the appropriate stage.

9. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	

