

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13347 of 2015

Arising Out of PS. Case No.-94 Year-2014 Thana- UJIYARPUR District- Samastipur

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1. Dhanpat Kumar Son of Reetlal Singh
 2. Sukhdev Sharma Son of Late Saukhi Lal Sharma. Both residents of Village - Pachpaika, Police Station - Ujiyarpur, District - Samastipur.
 3. Ram Naresh Rai Son of Sheetal Rai. Resident of Village - Chandchaur Ram Nagar, Police Station - Ujiyarpur, District - Samastipur.
 4. Ram Lalit Mahto Son of Sita Ram Mahto. Resident of Village - Mohanpur, Police Station - Samastipur Muffasil, District - Samasipur.
 5. Ashok Kumar Son of Bhola Rai, Katib Licence No. 220/2001, Resident of Village - Varuna Rasalpur, Police Station - Tajpur, O.P. Halai, District - Samastipur.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Veena Devi @ Meena Devi Wife of Sita Ram Mahto. Resident of Village - Pachpaika, Police Station - Ujiyarpur, District - Samastipur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Advocate
For the Opposite Party/s : Mr. Shyam Kumar Singh, A.P.P.-138

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 02-07-2019

Heard learned counsel for the petitioners as well as learned counsel for the State. No one appears on behalf of opposite party No.2 i.e. the complainant of the case, though appearance has been filed through *Vakalatnama*.

2. By filing this application under Section 482 of the Code of Criminal Procedure, the petitioners have sought for quashment of order dated 28.01.2015, passed by the learned Sub-Divisional Judicial Magistrate, Dalsing Sarai in connection with



Ujjiyarpur Police Station Case No.94 of 2014, corresponding to Trial No.1334 of 2015, whereby cognizance has been taken against the petitioners for the offences under Sections 420, 467 and 468 of the Indian Penal Code.

3. The ground of challenge is that none of the offences alleged are made out on bare perusal of the complaint based First Information Report.

4. According to F.I.R., the complainant had purchased the referred land through registered sale deed dated 27.05.2013 from villagers *Chand Sharma, Ram Prasad Sharma and Shankar Sharma*, all sons of *Late Anup Lal Sharma*.

5. Claim of the complainant is that the land is recorded in the name of *Anup Lal Sharma* and the complainant is in possession of the same after purchase. Further case is that petitioner, *Sukhdev Sharma* executed a registered sale deed on 28.12.2013 in respect of the same land in favour of petitioner, *Dhanpat Kumar*. Other accused persons, who are petitioners herein are either witnesses or scribe of the sale deed.

6. Allegation is that the subsequent sale deed is just to cheat the complainant, and the same was a forged document.

7. Contention of the petitioners is that the petitioners have disclosed the genealogical table of the family in para 9 of



the application on oath, which would show that *Anup Sharma* and *Saukhi Sharma* were full brothers. Petitioner, *Sukhdev Sharma* is son of *Saukhi Lal Sharma* and the vendors of complainant are sons of *Anup Lal Singh*. The property is ancestral property. The true fact is that the said property falls in share of *Sukhdev Sharma* but even in absence of any evidence to support the same, for the present, it cannot be inferred that petitioner *Sukhdev Sharma* acted with out and out mala fide intention without any bona fide claim over the property.

8. Submission is that the issue of requirement to prove offences under Sections 468 and 420 of the Indian Penal Code was before the Hon'ble Supreme Court in *Md. Ibrahim & Others versus the State of Bihar & Another*, reported in 2009 (4) PLJR (SC) 99.

9. Para 9 to 15 of the judgment are being reproduced below:-

“9. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery.



Section 464 defining "making a false document" is extracted below :

"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 digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed 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

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 digital



signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; 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 digital 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.

The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

10. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:



10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

10.2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

10.3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

11. In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.



12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorized or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is



not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorized by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted.

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).

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading



representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

15. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and



thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. The term 'fraud' is not defined in the Code. The dictionary definition of 'fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines 'fraud' with reference to a party to a contract. In Dr. Vimla vs. Delhi Administration, AIR 1963 SC 1572, this Court explained the meaning of the expression 'defraud' thus "The expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."



10. In view of the settled proposition above, this is not a case wherein the registered sale deed dated 28.12.2013 was created by impersonation or by claiming through some other person, nor it is a case wherein complainant has been cheated. Even if the transaction was a case of cheating, in fact petitioner No.1, *Dhanpat Kumar*, i.e., the purchaser of consideration, has been cheated and he has not made any complaint against the petitioner No.2, *Sukhdev Sharma*. The complainant has not been cheated at all.

11. Therefore, no offence for which cognizance is taken is made out. Accordingly, the impugned order is *set aside* and this application stands *allowed*.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	AFR
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