

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.163 of 2017

Arising Out of PS. Case No.-3450 Year-2015 Thana- SAHARSA COMPLAINT CASE
District- Saharsa

Rajeev Nandan Roy @ Rajiv Nandan Ray S/o Late Ram Nath Roy, Resident of Village- Patarghat , P.S.- Sour Bazar, District- Saharsa, Present residing at B- 203, Dominar Apartment Road No. 10B , Rajendra Nagar, Patna, Bihar- 800016

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Md. Najmuddin, S/o Late SK Alauddin , R/o Village -Patarghat, P.S. - Sour Bazar , District- Saharsa. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mukesh Kumar Jha, Adv
For the Opposite Party/s : Mr. Prem Kumar Jha, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 17-01-2019 Heard learned counsel for the petitioner, learned APP
as well as learned counsel for the OP No.2.

Petitioner/accused has challenged the order dated 14.07.2016 passed by Sri S. Das, Judicial Magistrate, First Class, Saharsa in connection with Complaint Case No. 3450(C)/2015 whereby and whereunder the learned lower court has been pleased to summon the petitioner to face trial for an offence punishable under Section 420, 467, 468/34 IPC.

It has been submitted at the end of petitioner that petitioner has sold away 22 decimals of land in favour of OP No.2 along with his brothers out of 27 decimals, total area as recorded in Khatian (Annexure-4). Because of the fact that remaining area has not been sold to OP No.2 on account thereof,



this case has been instituted on false and frivolous allegation, suppressing the real fact that out of total area of survey plot no. 1225, only 22 decimals have been sold in favour of OP No.2.

Learned counsel for OP No.2 has submitted that admittedly total area of plot no.1225 happens to be 27 decimals out of which, 22 decimals have been sold in favour of OP No.2 along with his brothers. Because of the fact that two decimals out of 22 decimals is being encroached by OP No.2 along with others, that being so, instant prosecution has been launched. It has also been submitted that the boundary wall of his house has fallen down which the petitioner is not allowing to construct. It has also been submitted that OP No.2 has got no concerned with remaining area and for that, petitioner be allowed to possess the land appertaining to 22 decimals.

There happens to be settled principle of law that the allegation having civil facet would not encroach upon criminal jurisdiction but, so far present nature of controversy is concerned, it happens to be out and out a civil dispute having no ingredients to justify criminal prosecution as, the allegation that the sale-deed has been executed with co-accused with an ulterior motive in order to encroach upon the interest of the OP No.2 could not be accepted as, during course of argument



learned counsel for OP No.2 has accepted the possession over the land.

That being so, the order of cognizance is, hereby, quashed. Petition is allowed.

Parties are at liberty to take proper recourse for redressal of their grievance if any.

(Aditya Kumar Trivedi, J)

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