

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.41386 of 2017**

Arising Out of PS. Case No.-47 Year-2016 Thana- SAHJAHANPUR District- Patna

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1. Mridula Singh, W/o Chandra Prasad,
  2. Vivek Kumar, Son of Late Dr. V. K. Singh, Both R/o Flat No. 43, Prakash Kunj Apartment , West Nageshwar Coloney, Boring Road, P.S.- Buddha Colony, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shivshankar Prasad, Son of Late Kailash Prasad, R/o Village- Nizamat, P.O. and P.S.- Dhanrua, District- Patna.

... .. Opposite Party/s

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**Appearance :**

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| For the Petitioner/s       | : | Mr. Ramakant Sharma-Sr. Advocate<br>Mr. Nikhil Kumar Agrawal-Advocate<br>Ms. Aditi Hansaria-Advocate<br>Ms. Deepika Sharma-Advocate |
| For the Opposite Party/s : |   | Mr. Narendra Kumar Singh-A.P.P.                                                                                                     |

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**CAV ORDER**

16    17-05-2019                      Petitioners have challenged the order dated 07.07.2017 passed by the A.C.J.M.-7<sup>th</sup>, Patna City, Patna in connection with Shahjahapur P. S. Case No.47 of 2016, whereby and whereunder petitioners along with others have been summoned to face trial for an offence punishable under Sections 323, 504, 406, 420, 506, 424, 384 of the I.P.C. and Section 27 of the Arms Act.

2. In order to appreciate the submission having so raised at the end of respective parties, bereft of unnecessary details, the facts relevant for just decision of the case is to be noted down.



3. Opposite party no.2/ complainant is the purchaser from Meenakshi Singh, wife of Ravitabh Ranjan, son of Late Dr. Vinay Singh appertaining to 58 decimal of Khesra No.1042, Khata No.173 lying at village-Tharbhaiya, P.S.- Shahjahapur, District-Patna, vide sale deed dated 18.05.2010 and since thereafter, he is over the land. The land has been mutated in his name. It has also been disclosed that his vendor Meenakshi Singh has got the same from her parental side. It has further been disclosed that Mirdula Singh, Vivek Kumar, who happens to be Fua as well as step-brother of Meenakshi, sold the land to Rohan Yadav on 27.05.2016, whereupon Yogendra Mahto stood as a witness. It has also been pleaded that on 01.08.2016, while the complainant was engaged in ploughing his field, the aforesaid Rohan Yadav came, abused, assaulted and further, threatened of dire consequence divulging the fact that now, the land has been purchased by him. On protest, he also shot at having miraculous escape. Then, it has been pleaded that all the accused persons after hatching a conspiracy in order to encroach upon the rightful claim of the complainant, and to dispossess him illegally, prepared false, frivolous, forged document and so, they are liable to be prosecuted as well as punished.



4. After submission of the aforesaid complaint petition, the same was sent to the concerned police station, for registration and investigation as provided under Section 156(3) Cr.P.C., whereupon Shahjahapur P. S. Case No.47 of 2016 has been registered, investigated upon and after concluding the same, chargesheet has been submitted followed with the order impugned, subject matter of instant petition.

5. Before proceeding ahead, it looks pertinent to mention the fact that the execution report against O.P. NO.2 disclosed about his death, whereupon petitioners tried to substitute him. During course of consideration, the issue was found properly clouded, hence matter was referred to Division Bench, vide order dated 28.03.2019, the issue has been decided holding that substitution is not legally permissible.

6. Manifold arguments have been made at the end of the learned counsel for the petitioners while challenging the order impugned. The first and foremost happens to be that the complaint petition has been filed on 05.08.2016 followed with order in accordance with Section 156(3) of the Cr.P.C., then in that circumstance, the parameters so laid down by the Hon'ble Apex Court in *Priyanka Srivastava and another vs. the State of Uttar Pradesh and others reported in (2015) 6 SCC 287*,



should have been followed. That means to say, at least the complaint should have been supported with an affidavit:- “Non-fulfillment of the direction adversely affects the generic of the instant prosecution, consequent thereupon, the whole prosecution is liable to be quashed. Furthermore, it has also been submitted that instead of prosecuting the petitioners, opposite party no.2/ complainant should have prosecuted his vendor alone, because of the fact that opposite party no.2 has been deceived at the end of his vendor and not by others. In order to substantiate the same, it has been submitted that from the complaint petition itself, it is evident that the petitioners/accused are not the strangers rather Fua, step-brother of the vendor of the complainant. It has also been submitted that the petitioner no.1, Mirdula Singh had instituted a Title (Partition) Suit No.442 of 1999, wherein the vendor of the O.P. No.2 as well as her mother and petitioner no.2 along with others were the parties, which ended in compromise and Schedule-I has been allotted to the petitioner no.1, Schedule-II allotted to the petitioner no.2 along with his brothers and sisters and Schedule-III to the vendor of the O.P. No.2/ complainant. After going through the description of Schedule-III, it is evident that no land has been allotted in her favour as in lieu of immovable property,



she along with her mother had accepted Rs. Five Lacs in cash and 200 gm gold. That being so, the vendor of the O.P. No.2, was not at all competent enough to execute sale deed with regard to properties, which she had relinquished in terms of compromise. It has further been submitted that aforesaid Title (Partition) Suit has been decreed by the Lok Adalat and to substantiate the same, the order of the Lok Adalat dated 18.12.199 (Annexure-6) has been filed. It has further been submitted that aforesaid order has not been challenged and so, got its finality. It has further been submitted that from the aforesaid factual status, it is crystal clear that the vendor of the O.P. No.2 had not got right, title with regard to any immovable property including the present one and so, the document having executed by Meenakshi Singh in favour of O.P. No.2 could not be legally entertained. It has also been submitted that the dispute as flashed clearly suggests out and out relating to title as well as possession and so, it could not be established, decided by way of criminal prosecution. To substantiate the same, referred ***(1977) 2 SCC 699 (State of Karnataka vs. L. Muniswamy and others), Indian Oil Corpn. vs. NEPC India Ltd. And others reported in (2006) 6 SCC 736.***

7. On the other side, learned Additional Public



Prosecutor has submitted that the learned counsel for the petitioners placed wrong facts in order to mislead. It has further been submitted that the land under dispute is not at all subject matter of Title (Partition) Suit No.442 of 1999 and on account thereof, claim of the petitioners/ accused that the land belongs to them exclusively is not at all correct. It has further been submitted that the land under dispute is not at all allotted to the share of the petitioners under the above referred Partition Suit rather it came from another branch of the family as residuary on account thereof, the petitioners are not at all entitled to take any kind of advantage under the banner of the decree passed by the Lok Adalat based upon compromise having arrived in between the vendor of the O.P. No.2 as well as petitioners. That being so, unless and until, there happens to be specific claim identification with regard to title, share, possession of the petitioners, even in worst case, to the extent of their entitlement, it could not be said that the dispute relates with civil cause and so, fit for quashing. Furthermore, it has also been submitted that had there been grievances, it was expected at the end of the petitioners to have instituted a title suit/ partition suit for proper identification of their share with regard to the land under question as well as for declaring the sale deed executed by



Meenakshi in favour of O.P. No.2 to be null and void. Instead of taking legal recourse, the petitioners have executed sale deed in favour of another accused after expiry of the period of limitation and that is indicative of the fact that the sale deed has been executed intentionally, purposely in order to axe upon the interest of the O.P. No.2. In spite of the fact that O.P. No.2 has got peaceful possession over the land under question. That being so, the order impugned is no interference.

8. After appreciating the rival submission, it is an admitted fact that the vendor of the O.P. No.2, Meenakshi and both the petitioners belonged to the same family. From Annexure-4, it is evident that petitioner no.1, Mirdula Singh had filed Title (Partition) Suit No.442 of 1999 (Annexure-4), which ended in compromise bearing seal of the permanent Lok Adalat wherein admittedly, there happens to be no description of the land under dispute. So, the proper identification of the land under dispute whether it happens to be under exclusive share/possession of Meenakshi, vendor of the O.P. No.2, or the petitioners or having both of them is a question to be decided by the Civil Court. On the other hand, it is crystal clear that criminal Court is found deficient one, to decide the legality of the document, as coming from common descendants, at least



whether petitioner no.2 is found excluded, is also to be the competence of Civil Court. In the aforesaid background, the status of the parties could be identified only by a Civil Court and not by a criminal Court. Apart from this, so far allegation against these two petitioners are concerned, there happens to be nothing more than acknowledging their activity that they have sold the land to Rohan Yadav on 27.05.2016.

9. In *Indian Oil Corpn. vs. NEPC India Ltd. And others reported in (2006) 6 SCC 736*, it has been decided that wherever there happens to be dispute having civil germane, then in that circumstance, irrespective of the fact that criminal prosecution may attract, but should not be allowed as it will give a fruitless result. For better appreciation, the relevant paragraphs are quoted below:-

*“12. The principles relating to exercise of jurisdiction under [Section 482](#) of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - [Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre](#) [1988 (1) SCC 692], [State of Haryana vs. Bhajanlal](#) [1992 Supp (1) SCC 335], [Rupan Deol Bajaj vs. Kanwar Pal Singh Gill](#) [1995 (6) SCC 194], [Central Bureau of](#)*



Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan vs Vijay Kumar [2001 (8) SCC 645], and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the



*criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.*

*(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.*

*(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.*

*(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal*



*proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.*

*13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. [In G. Sagar Suri vs. State of UP](#) [2000 (2) SCC 636], this Court observed :*

*"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal*



*offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under [Section 482](#) of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."*

10. Considering the factual aspect as exposed in consonance with the principle enunciated by the Apex Court, it has become crystal clear that as the dispute arise over proper legal identity of the sale deed executed by the vendor of the O.P. No.2 as well as petitioners, coming from same branch, being out of jurisdictional avenue of criminal Court, whereupon the order impugned is set aside. Petition is allowed, however, to the extent of petitioners only.

**(Aditya Kumar Trivedi, J)**

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