

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 21870 of 2007

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1. Shiv Narayan Mahto Son of Late Dayali Mahto, resident of village-
Gamhariya, P.S. Raxaul, District- East Champaran.
2. Briksha Mahto, Son of Narayan Mahto, resident of Village- Banwaliya, P.S.
Narkatiaganj, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Jang Bahadur Mahto Son of Late Narsingh Mahto, resident of Village-
Gamhariya, P.S. Raxaul, District- East Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar and Mr. Ram Bibash Prasad, Advocates
For the State	:	Mr. Gauri Shanker Gupta, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 25-01-2019

Heard learned counsel for the petitioners.

2. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 (hereinafter referred
to as the 'Code') for the following relief:

*“That this application is for quashing the
entire criminal proceeding including the order of
cognizance dated 02.09.2005 under Section 419,
467 and 471 Indian penal Code passed by Sri O. P.
Srivastava, Judicial Magistrate, Motihari in Inquiry
Case No. 247 of 2005 arising out of Complaint Case
No. 2586 of 2004/Tr. No. 2318 of 2005 in most
illegal and arbitrary manner which is not
sustainable in the eye of law.”*

3. As per the allegation in the complaint, the petitioner
no. 1 is said to have fraudulently got executed a sale deed in his
favour from petitioner no. 2 showing him to be the maternal



grandson (*Nati*) of Gudri Mahto. The allegation is that the petitioner no. 2 is not the maternal grandson of Gudri Mahto and, thus, with a view to grab the property in the share of the opposite party no. 2, the petitioners in collusion have committed the offence.

4. Learned counsel for the petitioners submitted that the plain reading of the complaint would disclose that the matter is purely civil in nature. It was submitted that the main allegation being whether the petitioner no. 2 is the maternal grandson of Gudri Mahto, has to be challenged before the Civil Court of competent jurisdiction for getting a declaration and not by filing criminal case. Learned counsel submitted that from the *panchnama*, pursuant to *panchyati* held between the parties, to which the father of the opposite party no. 2 is a party, itself discloses that Gudri Mahto did leave behind a maternal grandson and, thus, the allegation in the complaint stands falsified where it has been stated that Gudri Mahto died without marrying. Learned counsel further submitted that the petitioner no. 2 is the maternal grandson of Gudri Mahto and, thus, when a person alleges something to the contrary, it is for that person to prove it as the onus is on him and the only forum available is the Civil Court of competent jurisdiction, as it would necessarily involve



examination of witnesses and recording of evidence. It was submitted that unless there is a declaration that the petitioner no. 2 is not the maternal grandson of Gudri Mahto, which the petitioner no. 2 vehemently states he is, criminal proceeding is an abuse of the process of the Court.

5. Despite service of notice on opposite party no. 2, nobody appeared on his behalf when the matter was taken up and heard. Further, even learned A.P.P. for the State was not in a position to assist the Court as he did not have a copy of the brief, when called upon to assist.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. The contention of learned counsel for the petitioners is correct that the onus is on the opposite party no. 2 to first prove and get declared that the petitioner no. 2 is not the maternal grandson of Gudri Mahto, in the face of the petitioner no. 2 claiming to be so, and in support of which various documents have also been brought on record. The same not being rebutted or countered is also a pointer to the fact that the opposite party no. 2, either does not want to contest the matter or does not have any reply to the contentions of the petitioners. Moreover, such a declaration with regard to



whether a person is related to any other person has to be looked into and decided by a Civil Court of competent jurisdiction on the basis of evidence and statement of witnesses, in accordance with law. For such purpose, straightway filing of a criminal case alleging that the lineage of the person is incorrect, as disclosed in the documents, bereft of any finding from the competent authority/forum to such effect, in the opinion of the Court is not within the scope of a criminal proceeding.

7. Thus, the Court finds that a purely civil dispute has been given the colour of a criminal case for oblique reasons and allowing the same to proceed would be an abuse of the process of the Court.

8. For reasons aforesaid, the application is allowed.

9. The entire criminal proceeding of Inquiry Case No. 247 of 2005 arising out of Complaint Case No. 2586 of 2004/ Tr. No. 2318 of 2005, including the order taking cognizance dated 02.09.2005, stand quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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