

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29045 of 2014

Arising Out of PS. Case No.-2236 Year-2013 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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1. Rataneswar Upadhaya @ Pappu Upadhaya S/o Dinanath Upadhaya
 2. Mohan Rai S/o Adalat Rai
- Both R/o Vill. - Raghunatpur, P.S. Keshariya, Distt. - East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Krishndeo Upadhaya S/o Late Asarif Upadhaya R/o Vill-Raghunatpur, P.S. Keshariya, Distt. - East Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.
For the Opposite Party/s : Mr.

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

ORAL JUDGMENT

Date : 08-01-2019

Heard learned counsel for the petitioners; learned A.P.P.
for the State and learned counsel for the opposite party no. 2.

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 being
filed to quash the order dated 20.05.14
passed in Tr. No. 5752 of 2014 arising
out of Complaint Case No. 2236 of 2013
passed by Shri Ashok Kumar 11 J. M. 1st
Class Sadar Motihari, East-Champaran
whereby and where under the learned
court below has taken cognizance under*



*Sections 420, 468 and 471 of I.P.C.
against the petitioners.”*

3. The allegation against the petitioner no. 1 is that he was witness on the sale deed of a piece of land in favour of petitioner no. 2, which was registered by co-accused Dinanath Upadhaya beyond the land allotted to his share.

4. Learned counsel for the petitioners submitted that a purely civil matter has been given a criminal colour which is impermissible. It was submitted that the petitioner no. 2 is the purchaser of land from co-accused Dinanath Upadhaya, who has represented the land bought by him to be his and, thus, he is in no way connected with any criminal liability as it is a matter between the complainant (opposite party no. 2) and the co-accused with regard to the share allotted to them. It was further submitted that being the purchaser, under *bona fide* impression, the petitioner no. 2 having paid for the land bought by him through registered sale deed may himself be a victim if ultimately it is found that the land sold to him was beyond the share of his vendor, Dinanath Upadhaya and in any view of the matter, no allegation of any criminal nature can be fastened on him. As far as petitioner no. 1 is concerned, learned counsel submitted that he is a mere witness on the deed and, thus, as per law, he is merely a witness with regard to the parties who have executed the sale deed by way of



an identifier to such execution and the parties themselves. It was submitted that the petitioner no. 1 had no role in the deal between the seller i.e., Dinanath Upadhaya and the petitioner no. 2. It was further submitted that the petitioner is the nephew of the opposite party no. 2 and there are cases between the parties as petitioner no. 1 had filed criminal case against the opposite party no. 2, in the year 2012 whereas the present complaint case has been filed in the year 2013 and further there is also litigation pending under Section 145 of the Code between the parties. Learned counsel further submitted that even otherwise if the sale deed has wrongly been executed, the remedy is to move before the Civil Court of competent jurisdiction for setting it aside but the criminal proceeding is clearly an abuse of the process of the Court.

5. Learned A.P.P. and learned counsel for the opposite party no. 2 vehemently opposed the application. They submitted that the petitioners were parties to the sale deed which was fraudulently executed as the seller did not own the land which has been sold to the petitioner no. 2 and the petitioner no. 1 being a witness to the sale deed is equally responsible for such act. However, on a direct query of the Court as to how the petitioners, in the present transaction are criminally liable, since the petitioner no. 1 is a mere witness and the petitioner no. 2 is the purchaser,



learned counsel for the opposite party no. 2 was not in a position to counter the same.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, a case for interference has been made out. As has rightly been submitted by learned counsel for the petitioners, in the present transaction, the petitioner no. 1 is merely a witness with regard to the execution of the sale deed and at best also an identifier of the parties and it is not the case that the sale deed has been executed by a fraudulent person through impersonation or the sale deed was never executed. Similarly, the petitioner no. 2, being a purchaser, has no role if the seller i.e., Dinanath Upadhaya had executed sale deed of land which does not belong to him as it was the responsibility of Dinanath Upadhaya to correctly and honestly state the truth. In this regard, the Court would refer to the Judgment of the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, where at paragraph no. 102, the categories under which the power under Section 482 of the Code should be exercised have been enumerated. The same reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the



extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercise.

(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and



continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

7. The Court finds that the present case is covered under categories 1 and 7 of the aforesaid judgment.

8. Accordingly, the application is allowed. The order dated 20.05.2014 passed in Tr. No. 5752 of 2014 arising out of Complaint Case No. 2236 of 2013 by which the Judicial Magistrate 1st Class Sadar Motihari, East-Champanan has taken cognizance under Sections 420, 468 and 471 of the Indian Penal Code, as far as it relates to the petitioners, stands quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

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