

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.57 of 2017

Arising Out of PS. Case No.-54 Year-2015 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

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1. BALDEO PRASAD, S/o Late Sukdev Prasad,
 2. Umesh Prasad,
 3. Suresh Prasad, Both sons of Baldeo Prasad, All residents of Purani Bazar, Ward No. 01, Narkatiyaganj, P.S. Shikarpur, Distt. - West Champaran
- Petitioner/s

Versus

1. The State of Bihar
2. Chotte Lal Prasad, S/o Late Sukdev Prasad, resident of Purani Bazar, Ward No. 01, Narkatiyaganj, P.S. Shikarpur, Distt. - West Champaran... Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Santosh Kumar Singh, Advocate
For the State	:	Mr.Sri Murlidhar, APP
For the Opposite Party No.2 :		Smt. Soni Srivastava, Advocate

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 10-01-2019 Counter affidavit filed on behalf of OP No.2 has been taken on record.

2. Heard learned counsel for the petitioners, learned counsel for the OP No.2 as well as learned APP.

3. Both the parties are full brothers, having status of jointness as there happens to be neither concrete evidence nor specific pleadings regarding partition by metes and bounds. However, an allegation has been attributed at the end of OP No.2/complainant that by forging his signature an application was filed before the CO for mutation which ultimately facilitated the mutation.

4. Learned counsel for the OP No.2 has submitted that in spite of mutation having been effected in the year 1995, he has come across the news on rumour after a long gap and



then thereafter, took necessary steps, challenged the order by filing an appeal whereunder it has been observed by the appellate court that forgery has been committed during course of filing of the petition and on the aforesaid finding, the instant complaint along with order of the cognizance is justified.

5. Learned counsel for the petitioners have submitted that considering the status of the parties and further, there happens to be no legal recognition to the mutation in order to identify title or possession coupled with the fact that the mutation was effected by adopting all the procedural norms, that means to say, the matter was verified and reported by the *Karamchari*, CI and then CO passed the order, on account thereof, those persons would have also been made party to the conspiracy and further, there happens to be no denial at the end of the complainant regarding entitlement of the petitioners coupled with the fact that no prayer was made at the end of the complainant during course of inquiry asking for the court to direct the petitioners to give their specimen signatures in order to compare it by a hand-writing expert as well as his own signature in order to trace out whether he had not put his signature over the aforesaid application, *prima facie*, no material exists.



6. Heard the parties and perused the order impugned.

7. As alleged by the OP No.2 after having his signature forged at the end of the petitioners got the mutation in their favour, is a grievance whereupon instant prosecution has been initiated. It is also evident from the complaint petition itself that Partition Suit No. 190/2000 is pending whereunder both are parties. Furthermore, mutation does not give title nor possession. Apart from this, the ultimate outcome of the partition suit will govern the future is one aspect. The second aspect is that the application was not prepared in presence of complainant. It happens to be simply his illusion that his signature has been forged. Had there been, then there should have been prayer at his end during course of an inquiry to have positive finding on that very score whether the signature having over the application does not belong to him.

8. Accordingly, the order dated 21.06.2016 passed by Sri Wasim Khan, Judicial Magistrate, 1st Class, Bettiah, West Champaran relating to Complaint Case No.54 (C) of 2015, is hereby quashed. Petition is allowed.

(Aditya Kumar Trivedi, J)

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