

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1024 of 2016

Arising Out of PS. Case No.-184 Year-2008 Thana- KHAJEKALA District- Patna

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1. Anant Prakash Kashyap S/o Sri Dwarika Prasad Kashyap
 2. Dwarika Prasad Kashyap son of Late Ram Prasad Kashyap
 3. Satya Prakash Kashyap S/o Sri Dwarika Prasad Kashyap
 4. Amit Kumar @ Amit Jha S/o Surya Narayan Jha
 5. Surya Narayan Jha @ Surya Narayan Mishra S/o Late Mahendra Narayan Jha All residents of Mir Jawan Ki Chhawani, Dallahatta, P.S. Malsalami, Dist. - Patna.
 6. Pritam Kumar @ Bitam Kumar @ Pritam Jaiswal S/o Bhrighunath Saw R/o Nandgola, P.S. - Malsalmi, Dist. - Patna.
 7. Ranjit Kumar Keshri @ Ranjit Kumar S/o Arjun Prasad Keshri R/o Paschim Darwaza, Sakidpur, P.S. - Alamganj, Dist. - Patna.
 8. Dhanraj Patel @ Dhanraj Prasad Patel @ Dhanraj Dalal S/o Dwarika Prasad Patel R/o Mouri Gali, P.S. - Khajekalan, Dist. - Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sri Gopinath Kashyap S/o Late Ramprasad Kashyap R/o Machharahatta, Maharaj Ghat, P.S. Khajekalan, District Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. N. K. Agrawal, Sr. Advocate
Mr. Prakash Chandra Agrawal, Advocate
For the Opposite Party/s : Mr. B.N.Pandey, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

4 14-11-2019 Heard Mr. N. K. Agrawal, learned senior Advocate



for the petitioners and the learned counsel for the State.

The petitioner no. 2 is the brother of the informant / Opposite Party No. 2, whereas petitioners no. 1 and 3 are sons of the petitioner no. 2. Rest of the petitioners are related to and associated with petitioners no. 1, 2 and 3.

The present petition has been filed against the order dated 24.02.2009 passed by the learned A.C.J.M., Patna City, Patna in connection with Khajekalan P. S. Case No. 1894 of 2008, whereby cognizance has been taken for the offences under Sections 147, 447, 448, 327, 188 and 427 of the Indian Penal Code.

The case of the informant / Opposite Party No. 2 is that during the pendency of a prohibitory order under Section 144 Cr.P.C., the petitioners illegally entered in the disputed premises and took control of the house in question. The further allegation is that the construction process was also begun. The petitioners claim that the property actually belonged to the informant / Opposite Party No. 2 but since he was in need of some money for starting a new business in Tamilnadu, he had entered into an agreement with petitioner



no. 2 for the conveyance of the aforesaid premises at a price which was indicated in the written deed of agreement for sale. Against the aforesaid agreement, the informant / Opposite Party No. 2 is also said to have received an amount of Rs. 7,00,000/- as advance from petitioner no. 2. After getting the aforesaid amount of money in advance, the Opposite Party No. 2 shifted to Tamilnadu along with his family but never acceded to the request of the petitioner no. 2 and his two sons namely petitioner nos. 1 and 3 for conveying the aforesaid property despite the aforesaid petitioners having disclosed their unequivocal intent of completing the process of payment for such conveyance of property. However, with lot of persuasion, the total consideration amount was paid and a power of attorney was issued in favour of petitioner no. 2 but the sale-deed was promised to be executed later. A title suit also has been filed by Opposite Party No. 2 against the petitioners *vide* Title Suit No. 15 of 2009 which is pending adjudication. The aforesaid Title suit is for declaration of the sale-deed of the said property to be null and void.



It further appears from the records that the Opposite Party No. 2 refused to accept notice issued to him under the direction of this Court but the copy of the order was affixed at his house. The Opposite Party No. 2 has chosen not to appear in this matter.

Considering two aspects of the matter, namely, that Opposite Party No. 2 is not willing to contest the present petition and that for Section 188 of the Indian Penal Code under which cognizance has been taken against the petitioners, complaint could only have been filed by the concerned SDO who had promulgated the order under Section 144 Cr.P.C.

This Court has come to the opinion that the present case is motivated and has been brought into existence for some *mala fide* purposes. With respect to other Sections of the Indian Penal Code in which cognizance has been taken, the submission of the learned senior counsel for the petitioners that such offences are not made out from the background facts, appears to be correct.

Regard being had to the facts that the petitioners



no. 1, 2 and 3 are related to Opposite Party No. 2 and who entered into the premises owned by the Opposite Party No. 2 against an agreement to sale and which agreement led the informant to execute a power of attorney in favour of petitioner no. 2, lodging of a criminal case against the petitioners no. 1, 2 and 3 and their associates who are the other petitioners in the present application, appears to be misconceived. No useful purpose would be served in allowing this prosecution to be continued in the event of Opposite Party No. 2 being absolutely unwilling to contest the matter.

Even otherwise also, to secure the ends of justice, this Court is of the view that the powers under Section 482 of the Code of Criminal Procedure could be exercised for setting aside the order of cognizance. While saying so, this Court would also take note of the fact that long back in the year 2009, charges were framed against the petitioners but till date the trial has not progressed and no witness has been examined.

Considering the aforesaid aspects, the order of cognizance and the prosecution arising therefrom against the



petitioners is quashed.

The application stands allowed.

(Ashutosh Kumar, J)

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