

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59650 of 2018

Arising Out of PS. Case No.-73 Year-2016 Thana- COMPLAINT CASE District- Sheohar

Mukesh Kumar Singh S/o Ugra Narayan Singh, R/o Vill.- Barahi Chintamani,
P.S.- Majorganj, District- Sitamarhi.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Umesh Kumar S/o Vir Bahadur Rai, R/o Vill.- Kushar, P.S.- Tariyani,
District- Sheohar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Jagjit Roshan
For the Opposite Party/s	:	Mr.Sri Ramchandra Singh
For O.P. No. 2	:	Mr. Praveen Kumar

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 18-06-2019 Heard learned counsel for the petitioner, learned
counsel for the opposite party no. 2 as well as learned counsel
appearing on behalf of the State.

This application has been filed for transfer of Trial
No. 167/18 arising out of Complaint Case No. 73 of 2016 under
Section 420 of the Indian Penal Code and Section 138 of the
Negotiable Instruments Act for the court of learned Additional
Chief Judicial Magistrate, Sheohar to the Court of learned
Additional Chief Judicial Magistrate -I, Sitamarhi.

The ground taken by the petitioner for transfer of the
aforesaid case is two fold firstly on the ground that a counter
case with different allegation of the same transaction has been



filed by the father of the petitioner against the opposite party no. 2 being Majorganj P.S. Case No. 67 of 2017 under Sections 323, 341, 406, 420, 467, 468, 472, 504 of the Indian Penal Code, which is pending in the court of learned Chief Judicial Magistrate, Sitamarhi and secondly on the ground that opposite party no. 2 is facing several cases and two of the cases are pending in Sitamarhi, out of which, one case has been filed by the father of petitioner, in which, the allegation relates to the same occurrence and, therefore, it has been prayed that for the ends of justice, it would just and proper that the aforesaid case may also be transferred so that there may be a fair trial. In support of his contention, he has relied upon the decision of Hon'ble Apex Court in the case reported in **2003 (9) SCC 426 State of M.P. vs. Mishri Lal.**

Learned counsel appearing on behalf of opposite party no. 2 submits that counter case filed by the petitioner does not relate to the same occurrence, as the allegation is entirely different and the same has been filed after lodging of the present case by the opposite party no. 2, in which, there is allegation that complainant – opposite party no. 2 and petitioner entered into an oral agreement, wherein, it was agreed that complainant would sell his land situated at Mauja Kushahar for a



consideration of Rs. 80 lacs to father of petitioner. In pursuance thereof, sale deed was executed on 30.11.2015 and Rs. 12 lac was paid and for the balance amount two cheques of Rs. 23 lac and Rs. 45 lac were given, which were dishonored by the bank on presentation due to insufficiency of funds and, therefore, the both the cases are different.

Whereas, the case of the petitioner is that after execution of sale deed in favour of father of petitioner, he applied for mutation of land in his favour and upon service of public notice inviting objection, on which, own uncles of complainant – opposite party no. 2 presented their objection stating therein that the complainant – opposite party no. 2 is the son of their full brother Veer Bahadur Rai and the complainant/ opposite party no. 2 had unauthorizedly disposed their undivided ancestral property. On enquiry, it also transpired that part of the land in question was already mortgaged in favour of Central Bank of India and sale and transfer of the said land was already restrained by the orders of Debt Recovery Tribunal. Thereafter, father of petitioner preferred an appeal before the court of learned Land Reforms Deputy Collector, Sheohar, in which, notices were sent to all the parties including complainant- opposite party no. 2 and all the facts were



discussed in detail and final order was passed on 19.06.2017 setting aside the order dated 02.02.2016 and with respect to the disputed Kheshra No. 866, which was mortgaged before Central Bank regarding that no order was passed and with regard to remaining land, order was passed to transfer the same in favour of father of the petitioner.

Further submission is that so far allegation of the complainant – opposite party no. 2 that the consideration amount for execution of sale deed has not been paid and the two cheques, which were of Rs. 23 Lac and 45 Lac given to the complainant – opposite party no. 2 were dishonored by the bank on presentation is concerned, it is evident from the recitals of sale deed dated 30.11.2015 that before registering the land in favour of the father of the petitioner, Complainant has received full consideration of Rs. 80 Lacs and the complainant – opposite party no. 2, at the time of registry, had admitted before the Registrar that he has received full consideration amount. It has also been submitted that the real fact is that complainant – opposite party no. 2 had taken huge amount of loan, which is Rs. 72, 31, 000/- from the Chennai based C.A. brother of the petitioner and out of which, the opposite party could only return an amount of Rs. 20,80,000/- and remaining amount i.e.



51,51,000/- remained due with the complainant – opposite party no. 2 and since, the complainant – opposite party no. 2 was not in a position to return the outstanding money, hence, he offered to transfer the land in question by executing sale deed in the name of the father of the petitioner against a total consideration of Rs. 80,00,000/- and complainant – opposite party no. 2 gave an undertaking on 05.07.2015 that as soon as he would receive the outstanding amount of Rs. 28,49,000/-, in cash, he would register the land in question in favour of father of the petitioner. Thereafter, on receipt of the remaining sum, the complainant – opposite party no. 2 executed the sale deed and, hence, the allegation that petitioner has cheated him is false and concocted and the cheques in question were given by the petitioner to the complainant – opposite party no. 2 as he has offered the petitioner to get him the dealership of Ultratech Cement, which was later on fraudulently presented by the complainant – opposite party no. 2 before the Bank keeping the petitioner in dark. Therefore, it is the complainant – opposite party no. 2, who has cheated the petitioner and his father by executing the sale deed of land, which was already mortgaged with Central Bank, for which, father of petitioner has filed a complaint case being Complaint Case No. 166 of 2017 in the Court of learned



Chief Judicial Magistrate, Sitamarhi, which was forwarded for registration of F.I.R. under Section 156 (3) Cr.P.C. and accordingly Majorganj P.S. Case No. 67 of 2017 was registered against the complainant – opposite party no. 2 and the same is presently pending in the Court of learned Additional Chief Judicial Magistrate – I, Sitamarhi. Thus, allegation levelled in both the cases arise out of same occurrence and, therefore, the petitioner prayed that the case filed by the complainant – opposite party no. 2 being Trial No. 167/18 arising out of Complaint Case No. 73 of 2016 be also transferred to the court of learned Additional Chief Judicial Magistrate -I, Sitamarhi, as the petitioner apprehends that justice would not be done at Sheohar, as the complaint – opposite party no. 2 is having several criminal antecedent.

Having heard both sides and considering the facts and circumstances and also the submission as well as the averments made in the petition for transfer, it appears that save and except the vague statement that petitioner has apprehension that justice would not be done at Shohar, there is no valid ground for transfer of the Trial No. 167/18 arising out of Complaint Case No. 73 of 2016 from the court of learned Additional Chief Judicial Magistrate, Sheohar to the Court of learned Additional



Chief Judicial Magistrate -I, Sitamarhi and facts of both the cases are not similar so far submission that the case against the applicant is also pending at Sitamarhi, is not a good ground for transfer of the present case as the Court at Sheohar has territorial jurisdiction so far the Complaint Case No. 73 of 2016 is concerned.

Thus, I do not find any merit in the instant transfer petition and the same is, accordingly, dismissed.

(Vinod Kumar Sinha, J)

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