

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75395 of 2019

Arising Out of PS. Case No.-229 Year-2016 Thana- PALIGANJ District- Patna

1. PAWAN KUMAR Son of Upender Singh Resident of Village - Akbarpur, P.S.- Paliganj, Distt - Patna.
2. Neeraj Kumar Son of Yogendra Singh Resident of Village - Nirakhpur, P.S.- Paliganj, Distt - Patna.
3. Ravindra Mistri Son of Shyamnandan Mistri Resident of Paliganj near Masjid, P.S.- Paliganj, Distt - Patna.
4. Raju Singh Son of Late Mahendra Singh Resident of Village - Nirakhpur P.S.- Paliganj, Distt - Patna.
5. Ashok Kumar Son of Devendra Prasad Resident of Village - Nirakhpur, P.S.- Paliganj, Distt - Patna.
6. Md. Munazim Firdoz @ Md. Monajim @ Guddu @ Md. Najar Firdaus, Son of Late Zaffar Miyan Resident of Village - Near Old Masjid, P.S.- Paliganj, Distt - Patna.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Lalita Devi, wife of late Vijay Singh, resident of village- Nirakhpur, P.S. Paliganj, District, Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anuj Kumar
For the Opposite Party/s : Mr.Chandra Sen Prasad Singh

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 03-02-2020

Heard parties.

This criminal miscellaneous petition has been filed under Section 482 of Cr.P.C. on behalf of the petitioners for quashing the order dated 05.10.2018 passed in Paliganj P.S. Case No.229 of 2016 passed by learned S.D.J.M., Danapur, Patna by which the learned court took cognizance under Sections 420, 465, 467, 468, 471 read with Section 34 of Indian



Penal Code against the petitioners.

Complainant / informant had filed a complaint case giving rise to Complaint Case No.1107 (c) /2016 in the court of Additional Chief Judicial Magistrate, Danapur alleging therein that complainant is a rustic villager and on account of her advanced age, accused duped her and got her signature fraudulently obtained on sale deed on pretext to grant her pension under Old Age Pension Scheme. However, her son subsequently came to know that two sale deeds have been got executed by her and accused wanted to grab her land. She never executed any sale deed in favour of accused nor she had any need of money. She has not received any consideration money. Son of the complainant obtained certified copy of two registered sale deeds dated 03.09.2016 and 07.09.2016 and she has filed title suit no.75/2016 for setting aside two sale deeds which is pending before the civil court.

The said complaint case was referred to the police under Section 156(3) of Cr.P.C. by learned court upon which FIR was registered giving rise to Paliganj P.S. Case No.2269 of 2016 instituted under Sections 420, 465, 467, 468, 471/34 of Indian Penal Code and after investigation, police found allegation to be false and submitted final form treating it to be



purely civil dispute, however, differing with the opinion of the police, the Magistrate on the basis of materials collected by the IO during investigation, found prima facie case to be made out against petitioners and took cognizance of offence under Sections 420, 465, 467, 468, 471 read with Section 34 of Indian Penal Code and issued summons to petitioners for their appearance to face the trial against which, the present petition has been filed for quashing the order taking cognizance against them.

It has been submitted on behalf of the petitioners that from mere reading of the complaint it would appear that no criminal offence is made out under Sections 420, 465, 467, 468, 471 read with Section 34 as no ingredients in order to constitute offence under said sections are made out against petitioners. It has further been submitted that plaintiff has already filed a title suit for setting aside two sale deeds which is pending before the civil court as such for the similar allegation criminal proceeding cannot be permitted to be initiated.

It is further submitted that the necessary ingredients in order to constitute offence under Section 420, 467 with regard to deception and preparation of forged document is completely lacking in the alleged complaint. Present case has



been instituted only to pressurize the petitioners in the civil case which is pending before the civil court.

Since sale deeds are registered sale deeds and there is presumption that they are valid and duly executed until and unless set aside by the competent civil court and there is presumption also that official act has been performed in a rightful manner as such registered sale deeds are valid till its declaration to contrary is made by civil court, as such no criminal offence is made out against petitioners.

Learned counsel for the petitioners has relied upon several judgments of the Apex Court as well as this Court in which similar view has been taken that if civil suit is pending and the allegations made are civil in nature, then no criminal offence is made out.

In support of his contention, learned counsel for the petitioners have relied upon the decision of Inder Mohan Goswami and another Versus State of Uttaranchal and others since reported in (2007) 12 SCC 1, Uma Shankar Gopalika Vs State of Bihar and another since reported in (2005) 10 SCC 336, Devendra and Ors. Vs. State of U.P. and another since reported in (2009) 7 SCC 495, Smt. Annu Sinha and Ors. Vs. State of Bihar and another since reported in 2016(3)PLJR 949 in



which similar view has been expressed by the Apex Court as well as this Court. Police also after investigation did not find any criminal offence to be made out and submitted Final Form treating it to be a civil dispute.

In Indian Oil Corporation Vs. NEPC India Ltd. and Ors. Since reported in 2006(6) SCC 736, the Apex Court has held in paragraph no.13 as under:-

“While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which, do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

For the reasons as stated above, the order taking cognizance against petitioners is not sustainable either in law or on fact and accordingly the order dated 5.10.2018 taking cognizance against petitioners under Sections 420, 465, 467, 468, 471 read with Section 34 of Indian Penal Code as well as



the whole criminal case arising out of Paliganj P.S. Case
No.229 of 2016 is set aside.

The criminal miscellaneous petition is allowed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.02.2020
Transmission Date	22.02.2020

