

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 78614 of 2019

Arising Out of Complaint Case No.-1034 Year-2019 Thana- BEGUSARAI COMPLAINT
CASE District- Begusarai

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1. Umesh Singh, aged about 60 years, Male, son of late Tiya Singh.
 2. Shambhu Kumar Singh @ Shambhu Singh, son of Tiya Singh.
- Both are resident of Village-Amrour Kiratpur, P.S. Muffasil (Singhul OP),
District-Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar
2. Santosh Kumar, aged about 34 years, Male, son of late Ram Khelawan Bhagat, resident of Village-Chota Panchagarh Jirba Bari Sahebganj P.S and Sub Division and District- Sahebganj (Jharkhand), at present resident of Village Mirzapur, P.S. Barauni, District Begusarai

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sabal Kumar Jha, Advocate
For the State	:	Mr. Bhanu Pratap Singh, APP
For the Opposite Party No. 2	:	Mr. Amit Narayan, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 19-10-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Sabal Kumar Jha, learned counsel for the petitioners; Mr. Bhanu Pratap Singh, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State and Mr. Amit Narayan, learned counsel for the opposite party no. 2- complainant.



3. The petitioners apprehend arrest in connection with Complaint Case No. 1034 of 2019 dated 10.06.2019, instituted under Sections 420/467/465/468/323/504 of the Indian Penal Code.

4. The petitioners are alleged to have taken Rs.7,50,000/- and executed sale deed in favour of the opposite party no. 2 for 2 *kathas* and 7 *dhurs* of land, but when the opposite party no. 2 went on the land, the accused abused and also threw brickbats and chased the complainant away and further, that when the complainant went to the revenue office, he came to know that neither the name of the petitioners nor their ancestors was recorded in Register II, which indicated that the sale made by them was of land, which did not belong to them.

5. On 07.09.2020, the Court had recorded the following order:

“XXXX

4. At the outset, learned counsel for the petitioners submitted that certified copy of the entry in the Register II indicates that a total of 1 Bigha, 5 Kathas, 11 Dhurs and 5 Dhurkis of land belongs to them, out of which the opposite party no. 2 was sold 2 Kathas and 7 Dhurs. It was submitted that even today they are ready to cooperate with the



opposite party no.2 by getting the land sold to him demarcated from that larger chunk of land and also before the authorities in showing that they are the owners of the land and have sold it to the opposite party no. 2 so that his name can be mutated in the official revenue records.

5. Learned counsel for the opposite party no. 2 agrees to such proposal.

6. In view thereof, the matter be listed on 19th October, 2020, among the top five cases. On that date, affidavit shall be filed, both on behalf of the petitioners as well as the opposite party no. 2, bringing on record the outcome of the exercise as indicated above.

7. The Court would indicate that it would primarily be the responsibility of the petitioners to ensure that such exercise is completed before the next date.

8. In the meantime, no coercive steps shall be taken against the petitioners in connection with Complaint CaseNo.1034 of 2019, pending before the Judicial Magistrate, 1st Class, Begusarai.”

6. When the Court called upon learned counsel for the petitioners as to whether the order dated 07.09.2020 had been complied and affidavit filed, he submitted that the same has not been done.



7. The Court finds that the conduct of the petitioners is not fair before the Court. On 07.09.2020, the Court grants them interim protection on the stand taken by learned counsel appearing on their behalf that the land sold to the opposite party no. 2 would be demarcated and they would also cooperate in getting the name muted before the authorities by showing that they are owners of the land.

8. Learned counsel for the opposite party no. 2 submitted that he has not been approached by the petitioners. The Court records that even such fact had to be brought on record by filing an affidavit, especially when the Court had asked the opposite party no. 2 also to file an affidavit bringing on record the outcome of the exercise. Thus, if there was no initiative on behalf of the petitioners, that fact had to be stated in the affidavit which was to be filed as per the direction of the Court in its order dated 07.09.2020.

9. Be that as it may, the Court has heard the matter on merits.

10. Learned counsel for the petitioners submitted that the land has come in the share of their father and that there was no bar in them transferring the same to the opposite party no. 2. However, on a direct query to learned counsel for the petitioners



as to why, when the Court had directed for an exercise, that too, on the stand taken by learned counsel for the petitioners, the same was not complied with, learned counsel submitted that the opposite party no. 2 is in Tripura and could not come for the exercise. However, the Court would observe that if this was the fact, the same had to be brought on record by stating it in the affidavit which was required to be filed in terms of the order dated 07.09.2020. Moreover, the Court would also observe that such stand does not appeal to the Court also for the reason that the opposite party no. 2 could have sent any of his representative with an Amin for getting the land demarcated and it was not incumbent that he himself come for the same. Thus, the Court is not inclined to accept such explanation on behalf of the petitioners.

11. At this juncture, learned counsel for the opposite party no. 2 submitted that besides not being approached by the petitioners, the opposite party no. 2 does not stay at Tripura and rather is working in Dehradun, and as has been observed by the Court, had the petitioners shown willingness for completing the exercise, he would have send a representative along with an Amin, but no initiative was taken by the petitioners in this regard.



12. Learned APP submitted that the allegation does show criminal liability for the reason that the land having been sold and money taken by the petitioners, which is admitted, the possession of the same was not handed over to the opposite party no. 2 and he is facing difficulty because of objection raised by the authorities with regard to the right title of the petitioners in executing sale deed in his favour.

13. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to grant pre-arrest bail to the petitioners.

14. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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