

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9449 of 2022

Arising Out of PS. Case No.-1062 Year-2021 Thana- HAJIPUR SADAR District- Vaishali

1. MISS SANDHYA UPADHYA W/o Sri Kishor Upadhyia @ Brij Kishor Upadhyia, D/o Late Devendra Prasad Dubey Resident of 32, Old Doctor Colony, Vikash Nagar, Nutandi, Jagjivan Nagar, Dhanabd, District- Dhanbad (Jharkhand)
2. Ms. Sudha Kumari W/o Sri Jitendra Tiwary @ Jitendra Kumar Tiwari Resident of Road No. 36, Block No. 12, Sector 6, MIG Flats, Patna- 800004
3. Jitendra Tiwary @ Jitendra Kumar Tiwari S/o Kaushal Kishore Tiwary Resident of Room No. 36 Block No. 12, Sector 6 MIG Flats, Patna- 800004

... .. Petitioner/s

Versus

THE STATE OF BIHAR PATNA

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ravindra Nath Dubey, Advocate
For the Opposite Party/s : Mr. Lalan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 05-09-2022 Heard learned counsel for the petitioners, learned counsel for the informant and learned A.P.P. for the State.

The petitioners apprehend their arrest in a case registered for the offences punishable under Sections 467, 468, 420 and 120(B) of the Indian Penal Code.

Learned counsel for the petitioners submits that the petitioners are persons with clean antecedent. It is next submitted that petitioner nos.1 and 2 are own sisters of the informant and petitioner no.3 is husband of the petitioner no. 2 i.e., he is brother-in-law of the informant, the learned counsel next submits that a civil case has been given a colour of criminal



case, as the informant is trying to usurp the share of the petitioner nos. 1 and 2 in the ancestral property by putting them under fear of arrest. It is further submitted that since the petitioner nos. 1 and 2 have executed sale deed in respect of their share of land in the ancestral property, as such the present FIR came to be instituted. It is next submitted that since the informant was aggrieved by the execution of sale deed by the petitioner nos. 1 and 2, he could have filed a case before the Court of Competent Jurisdiction for getting the sale deed cancelled, but resorting to criminal case is nothing but an abuse of the process of Court to settle dispute by using coercion and force.

Learned counsel for the informant and the learned APP for the State opposes the bail application.

Learned counsel for the informant submits that he has not filed a counter-affidavit nor he has filed a supplementary affidavit but he has filed an affidavit bringing on record certain facts, wherein it has been stated that informant had filed a Partition Suit No. 87 of 2011 in the permanent Lok Adalat, Vaishali for partition of land in question, thereafter on 13.08.2012 the informant and his brother compromised the said partition suit and to that effect permanent Lok Adalat, Vaishali



passed an order as would be evident from Annexure-B to the affidavit, thereafter the land in question was mutated in the name of the informant and the informant is regularly paying rent of the land in dispute, the learned counsel next submits that petitioners had filed Mutation Appeal No. 162 of 2016-17 in the Court of DCLR, Hazipur for cancelling the mutation order in favour of the informant, it is further submitted that on 06.09.2017, the DCLR, Vaishali dismissed the mutation appeal by the speaking order, it is next submitted that a Partition Suit No. 508 of 2014 also has been filed by the petitioners against the informant for partition of land and during pendency of the said suit without permission of learned Sub-Judge, Vaishali, the petitioners illegally executed sale deed on 30.10.2021 of the land in question which is in the share of the informant and is paying rent, it is also submitted that in the said sale deed the petitioners have made certain statements which amount to forgery as petitioners have stated that the property in question is free from encumbrance when a partition suit is pending as aforesaid, it is also submitted that petitioners are harassing the informant as several times the house of the informant was searched by the Excise Department at the instance of the petitioners but no illegal articles were found in the house of the



informant, it is also submitted that Superintendent of Excise Department, Vaishali has assured the informant on 17.08.2022 that no search shall be made of his house as is evident from the Annexure-B,

Learned counsel for the petitioners rebuts the submissions of the learned counsel for the informant and submits that the informant in order to coerce the petitioners into submission has instituted the present false case, it is next submitted that the informant has not approached the Court with clean hands which also disentitles the informant from opposing the anticipatory bail application, the learned counsel for the petitioners next submits that this perhaps explains the reason as to why a proper affidavit i.e., a counter-affidavit has not been filed and why an affidavit has been filed which is not in accordance with the High Court rules so that the informant tomorrow will resile and may submit that no such affidavit was filed in the High Court but then the learned counsel for the petitioners submits that the onus or responsibility has been taken by the learned counsel for the informant, it is next submitted that it has been vehemently submitted that a partition suit was filed in the permanent Lok Adalat and the suit was compromised but the pleading does not even remotely suggest that as to



whether the petitioners, who are own sisters of the informant, were made party to that proceeding or not or the informant behind the back of the petitioners obtained the order in collusion with his brother, the learned counsel thus submits that petitioners were never made a party to that proceedings and thus were completely unaware that such mechanism would be adopted by the informant for usurping the share in the ancestral property of the petitioners who have a legal share in the ancestral property, it is next submitted that from perusal of the order of the DCLR, it would manifest that the issues were not adjudicated on merits as it has been recorded and pleaded at Para-5 of the affidavit, as it has been pleaded that the mutation appeal filed by the petitioners was dismissed by the DCLR by a speaking order which gives an impression that the order was reasoned but from perusal of Annexure-D, it would manifest that the order was not reasoned but on account of pendency of the partition suit between the parties and the fact that Lok Adalat had already passed an order as such the DCLR refrained from interfering in the order mutating the name of the informant with respect to the suit property rather the DCLR has observed that the order passed in the partition suit will bind the parties, the learned counsel next submits that the petitioners after



coming to know of the order passed by the learned Lok Adalat were aghast at the conduct of the informant and thus had no option but to approach the learned District Court for getting the suit property partitioned, the learned counsel thus submits that partition suit is pending the share till date has not been divided, but if there is necessity for selling the land it is not always necessary to seek permission of the Court and if the informant is aggrieved by the fact that a portion of land out of the suit property has been sold, he has a remedy of getting the sale deed cancelled through a duly executed civil proceedings, it is next submitted that when informant had a remedy of approaching the competent court for getting the sale deed cancelled the present FIR definitely is an abuse of the process of the Court or the informant also had the option of approaching the learned trial court where the partition suit is presently pending adjudication bringing to its notice that during pendency of the partition suit property has been sold by the petitioners, this amply demonstrates that conduct of the informant is not fair, as he is trying to coerce his own sisters into submission so that they out of fear of arrest don't seek their legitimate share in the ancestral property, the learned counsel for the informant has relied on Annexure-G to the affidavit to submit that the informant was



harassed by the petitioners on account of which several times his house was raided and the Excise Superintendent has issued a letter assuring the informant on 17.08.2022 that no search shall be made of his house, the learned counsel for the petitioners submits that it is an attempt to mislead this Court and to create bias against the petitioners, learned counsel for the petitioners next submits that no prudent officer can even think of passing such order but it may be an attempt on part of the informant including the advice tender that such false pleading has been made when the document clearly records that now whenever any raid would be conducted at the house of the informant the same would be verified earlier.

After hearing the learned counsel for the petitioners the Court comes to a prima-facie conclusion that the present FIR is nothing but an abuse of the process of the Court, a brother is trying to usurp the legitimate share of his sisters by coercing them into submission by putting them into fear of arrest by the police, the Superintendent of Police of the district is directed to threadbare investigate the case and in the event if the police comes to a conclusion that the present FIR was instituted only with a view to coerce sisters into submission or the allegations were made in the FIR with a malicious intent, when admittedly



informant had remedies available in law for seeking relief which he is seeking in the present FIR by moving an application before the Court of Competent Jurisdiction for cancelling sale deed or by bringing to the notice of the learned trial court where the partition suit is pending, then action in accordance with law must be initiated against the informant.

Learned counsel for the petitioners at this stage submits that it is travesty of justice that on one hand the learned counsel for the informant makes a submission that the petitioners has sold suit property during pendency of the partition suit when admittedly the informant also has sold 52 decimal of land from the said suit property on 26.05.2022 in favour of Dhurendra Rai which further goes to demonstrate that how criminal proceedings are being misused for settling civil disputes, the learned counsel for the petitioners submits that though the document is not on record but his submission can be recorded as he has instruction to make the submission.

Considering the submissions made by the learned counsel for the petitioners, the petitioners above-named, in the event of their arrest or surrender before the learned trial court within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/-



(Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned trial court where the case is pending/successor court in connection with Hajipur Sadar P.S. Case No. 1062 of 2021 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

Let a copy of this order be sent to the Superintendent of Police Vaishali at Hajipur for his perusal and necessary action.

(Satyavrat Verma, J)

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