

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10964 of 2021

Arising Out of PS. Case No.-679 Year-2013 Thana- BHABHU(KAIMUR) COMPLAIN C
District- Kaimur (Bhabua)

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1. Meer Isafak Husain, aged about 72 years, Son of Meer Akhamal @ Meer Akhamal Husain Resident of village- Vabhangava, P.O.- Nasej, P.S.- Kudra, District- Kaimur at Bhabua
 2. Meer Nizamuddin @ Meer Najimuddin, aged about 50 years, son of Meer Kifujaj Husain @ Meer Kifayat Resident of village- Vabhangava, P.O.- Nasej, P.S.- Kudra, District- Kaimur at Bhabua
 3. Mir Irfan, aged about 70 years, Son of Mir Rahaman Resident of village- Vabhangava, P.O.- Nasej, P.S.- Kudra, District- Kaimur at Bhabua

... .. Petitioners

Versus

1. The State of Bihar
2. Meer Isarar, aged about 72 years, Son of Mir Akhamal Hussain, Resident of village- Vabhangava, P.O.- Nasej, P.S.- Kudra, District- Kaimur at Bhabua

... .. Opposite Parties

Appearance :

For the Petitioners : Mr. Ashok Kumar Garg, Adv.
For the Opposite Parties : Ms. Meena Singh, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 28-04-2022 Heard learned counsel for the petitioners and learned
counsel for the State.

Learned counsel for the petitioners is expected to honour his undertaking given in the instant case for depositing the requisite court fee and to remove the defects as pointed out by office when called upon to do so by the office.

At the very outset, learned counsel for the petitioner submits that in view of demise of petitioner No.1, namely, Meer Isafak Husain, in the meantime, the application insofar as the petitioner No.1 is concerned, has become infructuous and is not



pressed.

The instant petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') has been filed for quashing the order dated 13/02/2020 passed by learned Judicial Magistrate, First Class, Kaimur at Bhabua in connection with Complaint Case No. 679 of 2013, by which the learned Magistrate has rejected the petition filed under Section 245 of the Code by the petitioners for their discharge.

Petitioners' counsel submits that the petitioner No.1 was, in fact, a *bona fide* purchaser of lands in-question. Petitioner Nos. 2 and 3 have stood as witness to the agreement and, therefore they have been made accused. The nature of allegations is predominantly civil. There is also a Suit bearing Title Suit No. 813 of 2014, pending in the Court of Sub Judge-I, Bhabua, wherein, the defendants are deposing. The petitioners are suffering rigours of two parallel proceedings civil as well as criminal. It is further submitted that, as per allegation, the petitioner No.1 had got the deed executed by setting up a person as Mir Imran, who actually was not Mir Imran. Mir Imran has not raised any issue regarding the deed of conveyance in issue in the instant proceedings and he has also not been made a party to the criminal prosecution.



The learned APP has submitted that the limited scope of scrutiny under Section 245 Cr.P.C. is to see whether *prima facie* case is made out. The submissions, which are being advanced by the petitioners' counsel, are not sufficient grounds for discharge.

The scope of scrutiny under Section 245 Cr. P.C. is clear from a bare reading of the Section itself. The Section contemplates discharge of the accused when no case is made out based on all the evidence on record after taking evidence for prosecution under Section 244 Cr. P.C. without any rebuttal. Submission advanced by the petitioners, in support of their petition for discharge, are substantially petitioners' rebuttal of the allegations.

This Court, while exercising jurisdiction under Section 482 of the Code would not examine these factual issues. The order dated 13.02.2020, in the opinion of this Court, after having considered the aforesaid submissions, does not required any interference.

The application is dismissed.

(Madhuresh Prasad, J)

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