

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50178 of 2015

Arising Out of PS. Case No.-879 Year-2007 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

=====

Permanand Sharma son of Late Shyam Prasad Sharma Resident of Mohalla Kajichak Panna Mill Road, P.O. Mirjanhat, Police Station Mojahidpur, District and Town - Bhagalpur. At present residing at Mohalla Bhatta Road, Gumti No. 12, Bhikhanpur, P.O. Bhagalpur, Police Station Ishakchak, District - Bhagalpur Bihar, PIN - 812001.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Indrani Choudhary wife of Bhudeo Choudhary
3. Bhudeo Choudhary Son of Banarsi Choudhary Both are residents of Village - Tagepur, P.O. and P.S. Jagdishpur, District Bhagalpur.
4. Sonu Kumar Bhagat @ Sonu Bhagat son of Late Anand Bhagat Halka Karamchari, Anchal Jagdishpur, District Bhagalpur, At present posted Anchal Pirpainti, District Bhagalpur.
5. Manoj Kumar Son of S.S. Choudhary Anchal Adhikari Anchal Jagdishpur, District - Bhagalpur, at present Sub Divisional Magistrate, Piro, Sub-Division, District - Bhojpur.
6. Navin Bhushan son of Late Kamleshwari Prasad Circle Inspector, Anchal Jagdishpur, District - Bhagalpur, at present Anchal Adhikari, Anchal - Mushari, District - Muzaffarpur.
7. Bidur Sharma Son of Late Shakhichand Sharma Resident of Mohalla P.O. and P.S. Wajabidpur, District - Bhagalpur.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Dr. Manoj Kumar, Advocate
For the Opposite Party/s : Mr. Brajendra Nath Pandey, APP

=====

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 17-03-2023 Heard the learned learned counsel for the petitioner

and learned APP for the State.

The petitioner has moved this Court for quashing of

the order dated 26.03.2015 passed by learned Ist Additional

Sessions Judge, Bhagalpur in Criminal Revision No.143 of



2009.

It has been submitted by the learned counsel for the petitioner that the original complainant Daya Devi died on 25-02-2011 whereafter the present petitioner preferred a petition to act as 'Pairvikar' of Late Daya Devi.

The further submission is that so far as the land in question is concerned, the 'Jamabandi' was created in the name of said Daya Devi and rent receipt was also issued in her favour by the office of Circle Officer, Jagdishpur (Annexure-2 Series) and she had never executed any sale deed in favour of opposite party no.2.

However, in Mutation Case No.798(10) of 2006-2007, it appears that she preferred application for mutation of land and further on the basis of the recommendation of the 'Karamchari' as also Circle Inspector dated 28-08-2006 (Annexure-4) the land came to be mutated in favour of opposite party no.2.

The case in hand is that no such application was preferred by opposite party no.2 and it was a collusive report of the 'Anchal Karamchari' as also Circle Inspector which resulted into the passing of the order.

Accordingly, Complaint Case No.879 of 2007 was preferred against opposite party no.2 to 7 under Sections 419,



420, 468, 471, 120B of the Indian Penal Code.

The complainant as well as witnesses were examined whereafter the learned Chief Judicial Magistrate, Bhagalpur vide an order dated 26-03-2009 was pleased to dismiss the complaint.

The learned Chief Judicial Magistrate in its order has narrated the fact that after the death of Sadho Lal, the name of Tara Devi was mutated as Sadho Lal in his lifetime had executed a general Power of Attorney in her favour who was his second wife.

It is important to incorporate the order of the learned Chief Judicial Magistrate, Bhagalpur for better appreciation:

“The record has been put up for order today.

A perusal of the complaint petition shows that the present complaint has been filed by Mosomat Daya Devi, against Indrani Choudhary and Bhudeo Choudhary who are the purchaser of the land from Tara Devi and also against the Halka Karamchari, Circle Officer and Circle Inspector who have submitted report and



passed the order of mutation of the name of Indrani Choudhary. Besides her S.A. the complainant has examined one witness Parmanand Sharma, who is daughter/son of the complainant. In addition to this the complainant has filed photo copies of Khatian recorded in name of Sadhu Lal and photocopy of Mutation order in the name of the complainant and rent receipt and municipal receipt issued in her name and the photo copy of registered sale deed executed by Tara Devi in view of Indrani Choudhary and copy of order of Mutation of the name of Indrani Choudhary and the report of Halka Karamchari and Circle Inspector. Virtually the complainant is aggrieved from the order of Mutation of name of Indrani Choudhary who is purchaser from Tara Devi.

A perusal of the documents filed by the complainant shows that after death of Sadho Lal her name was mutated. It also transpires that Sadho Lal in his lifetime



executed a general Power of Attorney in favour of his 2nd, wife Tara Devi who executed the sale deed in favour of Indrani Choudhary.

In her S.A. the complainant has stated that she or her husband has not sold the property to Indrani Choudhary but she has concealed this fact that the sale deed was executed by Tara Devi. P.W. 1 has stated that Tara Devi was a concubine of his maternal grand father Sadho Lal but he has also stated that after execution of the sale deed Tara Devi died as she was murdered and it is he who lodged, the F. I. R. In which he has stated that Tara Devi is his maternal grandmother. Therefore, the complaint relates with the dispute of civil nature. In addition to his the circle officer, circle Inspector and the Halka Karamchari have performed their duty and have submitted report and passed order of mutation in official capacity during the discharge of



their official duty and the complainant has not obtained the requisite permission u/s 197 Cr.P.C. for prosecuting the public servant. The law provides the legal remedy to the complainant preferring appeal against the order of mutation passed by accused persons but the complainant instead of availing legal remedy of preferring appeal or revision, she has filed this complaint which is obviously not maintainable and the same has been filed to put criminal pressure upon the proposed accused persons. Besides, the complain is also not entertainable for want of requisite sanction of Govt. u/s 197 Cr.P.C. Therefore, I find that there is no ground to proceed in the complaint. It is therefore, ordered that the complaint is dismissed.”

Aggrieved, Criminal Revision No.143 of 2009 was preferred before the learned Sessions Judge, Bhagalpur.

The matter was taken up on 26.03.2015 by the court of learned First Additional Sessions Judge, Bhagalpur and the learned court came to the conclusion that the dispute concerned



is purely of civil nature and as such the learned court below has not committed any irregularity in passing the impugned order. The operative portion of the order reads as follows:

“Hence, I found no merit in this revision as the learned court below has appreciated the law stating that the dispute is of civil nature. This Criminal Revision is accordingly dismissed.

Let the record of lower court and copy of the order be sent to the learned court below.”

Having gone through the facts of the case, the mutation order of the Circle Officer, Jagdishpur, Bhagalpur, the complaints as also the orders passed by the learned Chief Judicial Magistrate, Bhagalpur and the learned First Additional Sessions Judge, Bhagalpur, it is clear that Late Sadho Lal had two wives namely Daya Devi and Tara Devi and as per the facts that has come on record the late husband Sadho Lal had given a power of attorney to Tara Devi who in turn sold the land to Indrani Chaudhary (opposite party no.2) and in that background the order of mutation was passed.

The learned Chief Judicial Magistrate, Bhagalpur as



such having taken note of each and every aspect rightly dismissed the complaint on which the learned First Additional Sessions Judge, Bhagalpur put a stamp.

Certainly the petitioner if aggrieved has civil remedy with relating to the land in question but to gain hold over the said land the process of the law/court cannot be used/misused.

The petition lacks merit and is accordingly dismissed.

(Rajiv Roy, J)

Prakash Narayan /-

U		T	
---	--	---	--

