

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16021 of 2018

Arising Out of PS. Case No.-2365 Year-2015 Thana- SIWAN COMPLAINT CASE District-
Siwan

-
1. Harihar Sah, S/o Munga Sah,
 2. Mehadi Abbas, S/o Late Ali Haidar,
 3. Ramashrai Singh, S/o Vishuni Singh,
 4. Suresh Manjhi, S/o late Bhutali Manjhi,
Serial No.1, 2 and 4 are R/o village Jilsandi, P.S.- Barharia, District- Siwan.
Serial No.3 is R/o village- Bhimpur, P.S.- Barharia, District- Siwan.

... .. Petitioners

Versus

1. The State of Bihar
2. Abdul Majid @ Ghasu Mia, S/o Lal Alijan, R/o village- Bhimpur, Jilsandi,
P.S.- Barharia, District- Siwan.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar, Advocate
For the State	:	Mr. Bal Mukund Prasad Sinha, APP
For the O.P. No.2	:	Mr. Ashok Kumar Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 17-01-2023

The present petition has been filed under Section 482 Cr.P.C., impugning the order dated 06.02.2018, passed by Ld. C.J.M, Siwan in Complaint Case No. 2365 of 2015, whereby Ld. Magistrate has taken cognizance of offence punishable under Sections 468, 420, 471, 472 and 504 of I.P.C. against four Accused-Petitioners, namely, Harihar Sah, Mehadi Abbas, Ramashrai Singh and Suresh Manjhi, who are petitioners herein, and has directed issuance of summons against them.

2. Initially, Ld. Magistrate had dismissed the complaint under Section 203 of the Cr. P.C. vide order dated



9.10.2015, holding that the facts and circumstances as alleged in the complaint, constitute a dispute of civil nature and no offence is made out. However, the said order dated 9.10.2015 passed by Ld. Magistrate was challenged in Criminal Revision No. 259/2015 before Sessions Court, Siwan and vide order dated 11.9.2017, Ld. Revisional Court set aside the cognizance order dated 09.10.2015, passed by Ld. Magistrate, and directed the Ld. Magistrate to make a further inquiry and pass fresh order. Hence the impugned order dated 6.2.2018 was passed by Ld. Magistrate taking cognizance against the petitioners of the offences punishable under Sections 468, 420, 471, 472 and 504 of the Indian Penal Code.

3. The allegation as made in the complaint is that the landed property bearing Khata No. 97, Survey No. 991, measuring an area of 1 Katha two dhurs had been wrongly sold by the Accused-Petitioner Mehadi Abass in favour of the Accused-Petitioner No. 1 Harihar Sah by a sale deed and Accused-Petitioners 3 and 4 Ramashrai Singh and Suresh Manjhi have signed the sale deed as witnesses. It is also alleged that in the said sale-deed the description of the property has wrongly been described as Khata No. 98, Survey No. 991 area of 7 dhurs.



4. Ld. Counsel for the petitioner submits that the Accused-Petitioner No. 2/ Mehadi Abbas is co-sharer of the Complainant/Opposite Party No. 2/Abdul Majid and the land in question had been inherited by him and the same has been sold by him to Petitioner No. 1/Harihar Sah after getting due consideration and the other co-accused, i.e. Petitioner Nos. 2 and 3, namely, Ramashrai Singh and Suresh Manjhi respectively are only witnesses to the execution of sale deed. As such, here is no criminal liability involved in the whole transaction and the present case has been filed by misusing the process of the Court.

5. It is also submitted that one of the co-sharers has also filed a Title Suit bearing Title Suit No. 1057 of 2015 in the District Court, Siwan, in regard to the same land.

6. He further submits that even if it is assumed that land belongs to the Opposite Party No. 2 (Complainant), namely, Abdul Majid and sale-deed has been executed by someone else, no title would get conveyed to the purchaser, because it is settled principle of law that no-one can transfer better title than his own. Hence, there is no loss to the complainant/ Opposite Party No. 2/Abdul Majid.

7. He also submits that even going by the whole complaint, no document is alleged to be forged; sale-deed is



genuine, executed *bona fide* by Petitioner no. 2/Mehadi Abbas in favour of Petitioner no. 1/Harihar Sah. There is no allegation of any impersonation in the alleged sale-deed, nor is any allegation of any misrepresentation to the Complainant by any of the Accused/Petitioners causing any inducement.

8. He further submits that the alleged facts and circumstances constitute, at most, a dispute of purely civil nature and hence the impugned order is not sustainable in the eyes of law and it is liable to be quashed.

9. However, Ld. Counsel for the Informant as well as Ld. APP for the State submit that all the accused persons, who are petitioners herein, have conspired to grab the land of the Complainant/Opposite Party No. 2/Abdul Majid by execution of the sale-deed in question, by Petitioner No. 2 Mehadi Abbas in favour of Petitioner No. 1/Harihar Sah, which has been attested to by Petitioner Nos. 3 and 4, Ram Aashrai Singh and Suresh Manjhi, respectively. Hence, offence is made out punishable under Sections 468, 420, 471, 472 and 504 of I.P.C. and there is no infirmity in the impugned order.

10. Before I proceed to consider the rival submissions of the parties, it would be pertinent to see the scope and ambit of Section 482 of the Cr. P.C.



11. Section 482 Cr. P.C. saves inherent power of High Court and it reads as follows:-

“482. Saving of inherent powers of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

12. In Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandojirao Angre, [(1988) 1 SCC 692] ,
Hon’ble three-Judge Bench of Supreme Court has laid down the law as to quashment of proceedings under Section 482 CrPC as follows :

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

13. Hon’ble Supreme Court in State of Haryana vs Bhajan Lal [1992 Suppl (1) SCC 335], delivered the land mark



judgment on the scope and extent of the jurisdiction of High Court under Section 482 Cr. P.C. It is still holding the field and being consistently followed and relied upon by all Courts including the Apex Court.

14. Hon'ble Apex Court in Bhajan Lal case (supra) held as follows:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an



order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking



upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

15. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konujalgi [(1976) 3 SCC 736], while considering the scope of Sections 202 and 204 of Cr. P.C., Hon’ble Supreme Court laid down the following guidelines and grounds on which proceeding would be quashed.

“(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.”

16. In Pepsi Foods Limited & Anr. v. Special Judicial Magistrate & Ors., [(1998) 5 SCC 749], Hon’ble Supreme Court has held as follows:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion



as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

17. In G. Sagar Suri v. State of U.P., [(2000) 2 SCC 636], Hon’ble Supreme Court has held as follows:

“8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the



process of any court or otherwise to secure the ends of justice.”

18. Hon’ble Supreme Court in Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122] observed as follows:

“8. ... It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

19. Hon’ble Supreme Court in State of Orissa Vs. Saroj Kumar Sahoo, (2005) 13 SCC 540 explaining the ambit and scope of Section 482 Cr. P.C. observed as follows:

“8. While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the



power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.”

20. In Indian Oil Corpn. v. NEPC India Ltd.,

[(2006) 6 SCC 736], Hon’ble Supreme Court has held as follows:

“ 12. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.



(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. 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 breakdown 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...”

21. In Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 , Hon’ble Supreme Court has



observed as under :

“ 46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.”

22. In R. Kalyani v. Janak C. Mehta [(2009) 1 SCC

516] , Hon’ble Supreme Court, interpreting the inherent powers of the High Court under Section 482 CrPC, has laid down the law as under:

“15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the



criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard-and-fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.”

23. Hon’ble Supreme Court in Ramveer Upadhyay & Anr Vs. State of UP & Anr (2022 SCC Online SC 484) has held as follows:-

“27. Even though, the inherent power of the High Court under Section 482 of the Cr.P.C., to interfere with criminal proceedings is wide, such power has to be exercised with circumspection, in exceptional cases. Jurisdiction under Section 482 of the Cr.P.C is not to be exercised for the asking.”

24. Hon’ble Supreme Court in Paramjeet Batra v. State of Uttarakhand, (2013) 11 SCC 673 held as follows:

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have



a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

25. In Vesa Holdings (P) Ltd. [Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293 , Hon’ble Supreme Court held as follows :

“13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court [Maniprasad v. State of Kerala, 2011 SCC OnLine Ker 4251] committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings.”

26. It emerges from the aforesaid statutory provisions and the case laws that for taking cognizance of any offence and issuing summons to any accused in a complaint



case, there must be a *prima facie* offence made out on the basis of the allegation made in the complaint and the statements made by the complainant and his witnesses during inquiry under Section 202 Cr.P.C. However, such allegation or the statements should not be patently absurd and inherently improbable to a prudent mind. Moreover, the allegation/statements made in the complaint and during inquiry under Section 200 Cr. P.C. should be examined as a whole, but the veracity of such statements could not be examined at this stage. The statements have to be taken at their face value to see whether *prima facie* case is made out or not. Moreover, if the given set of facts makes only a civil dispute, the complaint or the cognizance/summoning order should be quashed to prevent abuse of the process of court and promote ends of justice.

27. Now, the question for consideration is, whether the allegation made in the complaint or the statement of the witnesses as recorded in support of the same taken at their face value make out any case against the accused.

28. As per the allegation in the complaint and the statements of the complainant and his witnesses during inquiry under Section 200 Cr. P. C, Ld. Magistrate, has taken cognizance of offences punishable Sections 468, 471, 472, 420



and 504 of the Indian Penal Code vide the impugned order dated 06.02.2018,

29. Section 468 of the Indian Penal Code provides for punishment for committing forgery with intent to use the forged document or electronic record for the purpose of cheating. The Section provides imprisonment up to seven years. The offence is cognizable and non-bailable. **Section 471** provides for punishment for fraudulently or dishonestly using as genuine any document or electronic record which he knows or has reason to believe it to be a forged document or electronic record. Punishment for the same has been provided in the same manner as if he has forged such documents or electronic records.

30. Section 472 provides for punishment for making or counterfeiting any seal, plate or other instrument for making an impression with intent to use it for the purpose of committing any forgery punishable under Section 467, or possessing any such seal, plate or other such instrument knowing the same to be the counterfeit. Such offence has been made punishable upto life imprisonment.

31. Section 420 of the Indian Penal Code provides for punishment for cheating whereby dishonestly inducing the



person deceived to deliver any property to any person or to make, alter or destroy the whole or any part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security. The offence is punishable by imprisonment upto seven years.

32. Section 504 provides for punishment for intentionally insulting and thereby giving provocation to any person intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence.

33. Coming to the case on hand, I find that the sum and substance of the allegation is that the landed property belonging to the complainant has been sold by Petitioner No.2, Mehadi Abbas in favour of Petitioner No.1, Harihar Sah by execution of the sale deed. However, the land has been sold by the Petitioner No.2/ Mehadi Abbas, claiming that the property belongs to him by way of inheritance, as he is a co-sharer of the complainant.

34. The question is whether under such facts and circumstances, the sale-deed executed by the Petitioner No.2, Mehadi Abbas in favour of the Petitioner No.1, Harihar Sah can be held to be a forged document.



35. Forgery has been defined in Section 463 of the Indian Penal Code which provides as follows:

“463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

36. The basic ingredients of forgery as explained by Hon’ble Supreme Court in **Sushil Suri V. Central Bureau of Investigation, [AIR 2011 SC 1713]** are as follows:

“ 1) The making of a false document or part of it and (2) such making should be with such intention as is specified in the section, viz., (a) to cause damage or infringe to (i) the public, or (ii) any person; or (b) to support any claim or title; or (c) to cause any person to part with property, or (d) to cause any person to enter into an express or implied contract; or (e) to commit fraud or that fraud may be committed.”

37. **Section 464** of the Indian Penal Code defines making of false documents. It reads as follows:

“ 464. Making a false document. —

A person is said to make a false document or false electronic record—First — Who dishonestly or fraudulently—

(a)makes, signs, seals or executes a document or part of a document;

(b)makes or transmits any electronic record or part of any electronic record;

(c)affixes any electronic signature on any electronic record;



(d)makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly — Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly — Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Illustrations

38. Hon'ble Supreme Court had occasion to consider the similar facts and circumstances in **Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr., [(2009) 8 SCC 751]** which had traveled from the district of Madhubani, Bihar. In this case also, the complainant had made allegation that his land was sold by the accused without having any title to the land. The co-



accused were witnesses, scribe and vendor in regard to the sale-deed. Ld. Magistrate had taken cognizance of offences punishable under Sections 467, 471, 420 and some other sections of IPC. After analysis of Section 464 of the Indian Penal Code, Hon'ble Supreme Court clearly held as follows:

“ 17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

(Emphasis supplied)

39. Hon'ble Supreme Court in Randheer Singh

v. State of U.P., [(2021) 14 SCC 626], also held as follows:

“ 24. A fraudulent, fabricated or forged deed could mean a deed which was not actually executed, but a deed which had fraudulently been manufactured by forging the signature of the ostensible executants. It is one thing to say that Bela Rani fraudulently executed a power of attorney authorising the sale of property knowing that she had no title to convey the property. It is another thing to say that the power of attorney itself was a forged, fraudulent, fabricated or manufactured one, meaning thereby that it had never been executed by Bela Rani. Her signature had been forged. It is impossible to fathom how the investigating authorities could even have been prima facie satisfied that the deed had been forged or fabricated or was fraudulent without even examining the apparent executant Bela Rani, who has not even



been cited as a witness.

40. In the given case on hand also, there is no allegation of impersonation by any accused person while executing the sale-deed in question. No one has forged signature of the complainant or anybody else. Accused, Mehadi Abbas/ Petitioner No.2 has executed the sale-deed in regard to the land in question in favour of the Accused-Harihar Sah/Petitioner No.1, after taking due consideration, claiming title to the property. The Co-Accused/Petitioner No.3 and 4 have attested to the execution of the sale-deed. Hence, the sale-deed in question is not a forged document. It is genuine one, whether it conveys title to the transferee is a legal question to be decided by competent Civil Court. But Sections 468 and 471 of the Indian Penal Code do not get attracted against the Accused Persons/Petitioners.

41. As far as attraction of Section 420 of the Indian Penal Code to the alleged facts and circumstances of the case on hand is concerned, I find that the ingredients of this Section are as follows as explained by Hon'ble Supreme Court in **Mohammed Ibrahim case (supra) :**

“18.....

(i) deception of a person either by making a false or misleading representation or by dishonest



concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.”

42. Hon’ble Supreme Court further held in **Mohammed Ibrahim case (supra)**, as follows:

“ 19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).”

43. After analysing the facts and circumstances of the case which were similar to those of the present case on hand, Hon’ble Supreme Court in **Mohammed Ibrahim case (supra)** held that the offence as punishable under Section 420 of the Indian Penal Code is not made out. It observed as follows:

“ 20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently



induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner."

(Emphasis supplied)

44. In Robert John D'Souza [Robert John D'Souza v. Stephen V. Gomes (2015) 9 SCC 96 , Hon'ble Supreme Court after referring to Sec 415 IPC held as follows:

"12.From the above language of the section, one of the essential ingredients for the offence of cheating is deception, but in the present case, from the contents of the complaint it nowhere reflects that the complainant was deceived or he or anyone else was induced to deliver the property by deception. What was done, was so reflected in the resolutions, and sale deeds."

45. In the case on hand also, complaint has been made not by the purchaser of the land in question, but by someone else who claims that the land in question belongs to



him and the seller/Accused has no right, title or interest in the land in question. However, there is no allegation of any misrepresentation by any Accused to him to part with the land in question, nor has he executed the sale-deed. As such, his title, if any, to the land in question, is still safe, because his title cannot get conveyed to purchaser if the conveyance deed/sale-deed has been executed by someone else, who is not possessed of the title to the land in question. A purchaser can get the title conveyed only if the seller has title to the property. It is a settled principle of law that no one can transfer better title than his own, as **Hon'ble Supreme Court in Eureka Builders Vs. Gulabchand, (2018) 8 SCC 67**, has clearly held as follows:

“35. It is a settled principle of law that a person can only transfer to other person a right, title or interest in any tangible property which he is possessed of to transfer it for consideration or otherwise. In other words, whatever interest a person is possessed of in any tangible property, he can transfer only that interest to the other person and no other interest, which he himself does not possess in the tangible property.

36. So, once it is proved that on the date of transfer of any tangible property, the seller of the property did not have any subsisting right, title or interest over it, then a buyer of such property would not get any right, title and interest in the property purchased by him for consideration or otherwise. Such transfer would be an illegal and void transfers.”

46. As such, no offence as punishable under Section 420 of the Indian Penal Code is made out in the case on



hand.

47. I further find that even offences punishable under Sections 472 and 504 of the Indian Penal Code are not made out. Section 472 of the Indian Penal Code deals with making or possessing counterfeit seals etc., with intent to commit forgery. But there is no such allegation in the complaint. This section has been applied by Ld. Magistrate without application of judicial mind. Even the ingredients of Section 504 of the Indian Penal Code are not fulfilled by the alleged facts and circumstances. This section has been also applied arbitrarily without any justification.

48. Hence, in my view, the complaint does not disclose any offence, much less any offence under Sections 468, 420, 471, 472 and 504 of the Indian Penal Code. The alleged facts and circumstances of the present case, at most, constitute a dispute of purely civil nature between the parties for which remedy lies before a civil court by filing appropriate civil suit. The present Complaint is apparently abuse of the process of Court and is liable to be quashed. Ld. Magistrate had rightly dismissed the complaint by his order dated 09.10.2015. Ld. Revisional Court erroneously set aside this order vide his order dated 11.09.2017, directing Ld. Magistrate to conduct fresh



inquiry and pass fresh order. Accordingly, revisional order dated 11.9.2017 passed by Ld. Additional District and Sessions Judge-III, Siwan, and subsequent cognizance order dated 6.2.2018 passed by Ld. Chief Judicial Magistrate, Siwan, are quashed and set aside. The Criminal Proceeding arising out of the impugned cognizance order is also quashed and set aside. The application stands allowed, accordingly.

49. Hon'ble Supreme Court in **Mohammed Ibrahim & Ors. Case** (supra) also drew attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature for ulterior motive and the same should be discouraged. Hon'ble Supreme Court observed as follows:

“ 8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes.”

50. The present case is also a classic illustration of the tendency to file a criminal complaint giving colour of



criminal offence to otherwise a purely civil dispute involving title to landed property with intent to put pressure on the Accused to settle the civil disputes with the complainant. The litigants are hesitant to move Civil Courts which comparatively take long time to adjudicate the matter, and perhaps, also because Civil Courts do not rise to the occasion to pass interim orders to protect the rights and enforce the duties of the parties during pendency of the civil suits. But it is high time for Judicial Magistrates to prevent and discourage such criminal cases so that addition of such unwarranted criminal cases to already huge pendency is avoided. At the same time, Civil Judges are also expected to be prompt to discharge their duties as expected of them.

(Jitendra Kumar, J.)

S.Ali/ravishankar/
chandan-

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