

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20320 of 2016**

Arising Out of PS. Case No.-3155 Year-2013 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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1. Shambhu Pandey S/o Sri Satyanarayan Pandey
 2. Ranjeet Pandey @ Ranjit Pandey @ Ranjit Kumar Pandey S/o Sri Biswanath Pandey Both R/o Village- Dighara Rampur Sah, P.S. Sadar, District- Muzaffarpur

... .. Petitioner/s

Versus

1. State of Bihar and Anr
2. Smt. Sarita Devi W/o Sri Sanjay Kumar Choudhary, R/o Village- Hassanchak Bangara, P.S.- Sadar, District- Muzaffarpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Verma, Advocate
For the Opposite Party/s	:	Mr. Sanjay Kumar @ S.K., Advocate
For the State	:	Mr. B.N.Panday, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 21-02-2024

1. Heard learned counsel appearing for the petitioners, learned counsel appearing for the opposite party no. 2 and learned APP appearing for the State.

2. The present petition is preferred against, the order dated 08.10.2015 passed in Criminal Revision No. 27 of 2015, by the learned 13th Additional District & Sessions Judge, Muzaffarpur, whereby and where under said Criminal revision application has been dismissed and the learned trial court held that the order dated 19.07.2014 i.e. order taking cognizance against the petitioners do not warrant any interference, which has been passed by learned Judicial Magistrate 1st Class,



Muzaffarpur, in connection with Complaint Case No.3155/2013, by which Cognizance has been taken against the petitioners for the offence under Sections 420, 468 and 471 of the Indian Penal Code.

3. The prosecution case in brief is that Opposite Party No. 2/complainant filed a complaint case No. 3155 of 2013 in the Court of learned Chief Judicial Magistrate, Muzaffarpur, alleging inter-alia therein is that on 20.01.1980 one Shanti Devi W/o Kishun Singh purchased a piece of land bearing Khata No.114, Khesra No.758 area 13 decimal from Rajendra Chaudhary through registered sale-deed and she had been coming in peaceful possession thereon. Thereafter, on 23.1.2008 co-accused Shambhu Chaudhary purchased the aforesaid land from Shanti Devi vide registered sale-deed no.1829 and later on complainant purchased the aforesaid land from Shambhu Chaudhary on 19.3.2013 through a registered sale deed no.8145 on which Shambhu Pandey/petitioner no.1 was made identifier. It is further alleged that co-accused Shambhu Chaudhary through a forged sale-deed allegedly purchased above land from Braj Bhushan Chaudhary S/o Rajendra Chaudhary on 5.4.2004 vide sale deed no. 19120 while father of Braj Bhushan Chaudhary namely Rajendra Chaudhary



previously on 20.1.1980 had sold the said land to Shanti Devi. It is further alleged that on the basis of said forged sale deed no. 19120 co-accused Shambhu Choudhary again executed sale-deed vide Deed No. 837 dated 11.1.2008 in favour of one Lalita Devi W/o Saroj Kumar and again on 22.7.2013 Shambhu Chaudhary got executed sale-deed in the name of his mother Chandra Lekha Devi vide sale deed no. 22023 on which co-accused Ranjeet Kumar Pandey/petitioner no.2 was a witness and now the accused persons want to dispossess complainant from above purchased land. It is further alleged that the complainant purchased the aforesaid land from the petitioner on payment of cash Rs. 5,80,000/- which is mentioned in the sale deed. It is further alleged that in course of execution of sale deed one cheque No. 276053 of Central Bank of India Branch Majhauri Dharamdas mentioning the amount of Rs.1,00,000/- signed by the husband of complainant was missing for which her husband got the payment stopped. On 10.7.13 the husband of the Complainant namely Sanjay Kumar Choudhary received a legal notice sent through the advocate of co-accused Shambhu Choudhary and on perusal of the same it revealed that the said stolen cheque was used by co-accused Sambhu Choudhary with an intention for encashment which was dishonoured by the



Bank due to stop payment and then the co- accused Shambhu Choudhary has filed a case for the same. In this way, it is alleged that co-accused Shambhu Chaudhary with a view to dispossess the complainant got executed a forged sale deed already sold by him in which all the three accused persons are equally liable and filed a false case against the husband of the complainant for dishonouring of cheque to vex and illegal gain. On the basis of said complaint case an enquiry was conducted by the learned Magistrate and after S.A. of the complaint on oath and recording statements of the witnesses, the learned Magistrate vide his order dated 19.7.2014 took cognizance against the petitioners and named co-accused Shambhu Choudhary of the complaint case for the offences under Sections 420, 468 and 471 of the Indian Penal Code.

4. After taking cognizance dated 19.07.2014 the petitioners preferred Cr. Rev. No. 27 of 2015, which has been dismissed vide impugned order dated 08.10.2015 by the learned 13th Additional District & Sessions Judge, Muzaffarpur, which is not sustainable in the eye of law and the same is fit to be quashed by this Hon'ble Court.

5. Learned counsel appearing for the petitioner submitted that allegation against petitioner no. 1 is that he



identified the executor of sale deed no. 8145 dated 19.03.2013, whereas, the allegation against the petitioner no. 2 is that he was the witness of the sale deed no. 22036 dated 22.07.2013 executed by Srimati Lalita Devi. It is submitted that petitioners are not the beneficiaries of the transactions and they cannot be said to forge any documents as to attract a *prima facie* case under Section 467 and 468 of the Indian Penal Code. It is submitted that narration of complainant is not suggesting anything, *prima facie*, which may attract the offence under Section 420 of the Indian Penal code, against petitioners. In view of submissions, learned counsel submitted that continuing with the proceedings would amount to abuse of process of the Court.

6. Learned counsel appearing for the O.P. No. 2, while opposing this quashing petition fairly conceded that petitioner no. 1 is an identifier of the executor of sale deed no. 8145 and petitioner no. 2 is the attesting witness. Learned APP also opposed the application.

7. It would be apposite to reproduce paragraph 19 of the legal report of Hon'ble Supreme Court in the matter of ***Prashant Bharti vs. NCT of Delhi*** since reported in ***AIR 2013 SC 2753***; the Hon'ble Supreme Court has laid down the tests



containing four steps for the purpose of relying upon the documents. Relevant part in paragraph "19" of the judgment is quoted hereunder:-

"The power vested in the High Court under Section 482 of the Cr.P.C.. at the stages referred to hereinabove, would have far reaching consequences. inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted,



being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice."

8. It would be further apposite to refer legal report of Hon'ble Supreme Court in the case of ***Inder Mohan Goswami and Anr. vs. State of Uttaranchal and Ors.*** as reported in ***(2007)12 SCC 1***, where Hon'ble Supreme Court has categorically held that in some of the cases civil disputes are given a colour of criminal proceeding which is an abuse of the process of court. An extract from the said judgment of Hon'ble Apex Court is quoted hereunder as reference:

"This court in a number of cases has laid down the scope and ambit of courts powers under Section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 Cr.P.C. can be exercised:-

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court, and



(iii) to otherwise secure the ends of justice.”

9. In view of aforesaid factual and legal submissions, it appears that petitioners are not beneficiaries of the transactions, where they are only identifier of executor and signed document/sale deed as an attesting witness, where alleged offence appears purely civil dispute on its face.

10. Accordingly, the application stands allowed.

11. Hence, the impugned order dated 8.10.2015 passed in Criminal Revision No. 27 of 2015, by the learned 13th Additional District & Sessions Judge, Muzaffarpur alongwith the order taking cognizance dated 19.07.2014 passed in Complaint Case No.3155/2013 by learned Judicial Magistrate 1st Class, Muzaffarpur are hereby, quashed and set aside with all its consequential proceedings.

12. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.02.2024
Transmission Date	26.02.2024

