

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14242 of 2016

Arising Out of PS. Case No.-3163 Year-2012 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

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Amit Sinha Son of Late Jagdish Prasad Sinha resident of Devi Bhawan, New Area Kadam Kuan, P.S.- Kadam Kuan, District - Patna, at present posted as District Sub-Registrar, Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Hari Mohan Panday resident of Turkaha Tola, P.S. - Goplanganj, District – Gopalganj.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Mukteshwar Dayal, Advocate Mr. Vikas Mohan, Advocate Mr. Vikrant Kumar, Advocate
For the State	:	Mr. Upendra Kumar, APP
For the Opposite Party No.2	:	Mr. Vishwajeet Kumar Mishra, Advocate Mr. Basuki Nath Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 19-04-2024

The present petition, under Section 482 Cr.PC, has been filed for quashing the order dated 20.03.2013 passed in Criminal Complaint Case No. 3163 of 2012, whereby Ld. Vth Additional Chief Judicial Magistrate, Gopalganj has found *prima facie* case of offence punishable under Sections 417 and 465 of the Indian Penal Code against all the accused persons including the petitioner herein and directed issuance of summons against them. The petitioner has also prayed for quashing of the entire complaint wherein summons has been issued against the petitioner.

2. The prosecution case as emerging from the criminal complaint and the statement of the complainant made on solemn affirmation during pre-cognizance inquiry is that the Accused Rameshwar Pandey is not son of his cousin brother, Ramchandra Pandey who died issueless and his wife also died subsequently. It is the complainant and Anil Mishra and Sunil Mishra, who are sons of sister of Ramchandra Pandey, are in possession of the property of Ramchandra Pandey. It is alleged that Accused Rameshwar Pandey, Devwrat Pandey, Sugriv Kumar Manjhi, Harun Rashid, Nagendra Kumar Singh, Veer Bahadur Prasad, Amit Kumar Sinha (who is Petitioner), Arun Kumar Mishra, Dharmendra Pandey and Mir Hasan Ansari have fraudulently got sold the property in their name by sale deed. It is also alleged that Rameshwar Pandey is only 15-16 years old and as such, he is minor and he has no right and title to the property of Ramchandra Pandey and as such, he has no right to sell the property to anybody.

3. Ld. Counsel for the Petitioner submits that the Petitioner is a Government official and he is posted as District Sub-Registrar, Gopalganj *vide* his Notification No. 3126/3703 dated 30.06.2012 and 01.08.2012 and assumed charge on 14.09.2012. He further submits that at the time of the alleged

date of occurrence, he was not posted at Gopalganj where the alleged offence has been allegedly committed. As such, he is no way connected with the alleged offence. Alleged date of occurrence is 05.06.2012, 26.06.2012, 03.09.2012 and 06.09.2012, whereas he assumed charge at Gopalganj on 14.09.2012.

4. He further submits that the Petitioner is a government official, posted as District Sub-Registrar, Gopalganj and he has been implicated as Accused only on account of being District Sub-Registrar at Gopalganj and there is no any specific allegation against the Petitioner in the complaint petition. He further submits that no government officials can be prosecuted unless there is sanction for prosecution granted by Competent Authority under Section 197 Cr.PC. But in the present case, no sanction has been obtained, whereas the alleged registration of sale-deed by the District Sub-Registrar, Gopalganj has been done in discharge of his official capacity and in such situation grant of sanction is *sine qua non* for institution and continuation of the prosecution of the District Sub-Registrar, Gopalganj.

5. He further submits that even as per the alleged facts and circumstances, no offence is made out. In fact, it is a dispute of civil nature in regard to right and title to the property left

behind deceased Ramchandra Pandey and the accused Ramchandra Pandey, who has executed sale deed as son of Rameshwar Pandey. However, as per the complainant, Ramchandra Pandey died issueless and hence, his property has been inherited by the complainant and Anil Mishra and Sunil Mishra and hence, Ramchandra Pandey has no right and title to the property and hence, he has no right to sell the same. As per the sale deed, the Accused Rameshwar Pandey is 18 years old and he is son of Ramchandra Pandey though, the complainant is denying that he is adopted son of Ramchandra Pandey. As such, alleged facts and circumstances, constitute a dispute of civil nature and the same could be adjudicated only by Civil Court, but no offence at all is made out. He further submits that even if it is assumed that the land sold by Rameshwar Pandey belongs to the complainant, there is no loss to the complainant because it is a settled principle of law that no one can transfer better title than his own and as such, there is no loss to the complainant. Moreover, sale deed is genuine though the claim of the seller/Accused Rameshwar Pandey that he is son of deceased Ramchandra Pandey, is contested by the complainant saying that Ramchandra Pandey died issueless and Accused Rameshwar Pandey is not adopted son of deceased Ramchandra Pandey.

6. As such, as per Ld. Counsel for the Petitioner, the alleged facts and circumstances constitute, at most, a dispute of purely civil nature. Hence, the impugned order and the whole complaint is liable to be quashed.

7. However, Ld. APP for the State and Ld. Counsel for the Opposite Party No. 2 submit that the Accused persons including the petitioner have conspired to grab the land of O.P. No. 2 – Complainant. Hence, there is no illegality or infirmity in the impugned order and complaint is not maintainable in the eye of law.

8. 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.PC.

9. Section 482 Cr.PC 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.”

10. State of Haryana Vs. Bhajan Lal [1992 Suppl

(1) SCC 335, is the celebrated judgment on the scope and extent of the jurisdiction of High Court under Section 482 Cr.PC, still holding the field and being followed and relied upon by all

Courts including the Apex Court.

11. 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.”

(Emphasis Supplied)

12. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konujalgi [(1976) 3 SCC 736], while considering the scope of Sections 202 and 204 of Cr.PC., 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.”

(Emphasis Supplied)

13. In Pepsi Foods Limited & Anr. Vs. 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.....”

(Emphasis Supplied)

14. In G. Sagar Suri Vs. 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.”

15. Hon’ble Supreme Court in Paramjeet Batra Vs. State of Uttarakhand, (2013) 11 SCC 673 has 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.”

(Emphasis Supplied)

16. 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.PC. 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.PC 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.

17. 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.

18. As per the allegation in the complaint and the statements of the complainant and his witnesses during inquiry under Section 200 Cr.PC, Ld. Magistrate, has taken cognizance of offences punishable Sections 417 and 465 of the Indian Penal Code vide the impugned order dated 20.03.2013.

19. Section 417 of the Indian Penal Code provides for punishment for committing cheating. Section 415 of the Indian Penal Code defines cheating. In **Ram Das Vs. State of U.P., 1970 (2) SCC 740, Hon'ble Supreme Court** has analysed the ingredients of the offence of cheating as under:

“(i) there should be fraudulent or dishonest inducement of a person by deceiving him;
(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or
(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
(iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

20. As such, representation by the Accused to the

deceived doing fraudulent or dishonest inducement is *sine qua non* for making out offence under Section 415 of the Indian Penal Code. But in the case on hand, I find that there is no allegation of the Complainant that any Accused has made any representation to him to part with any property. As such, for want of any representation, question of any fraudulent or dishonest inducement of the Complainant does not arise.

21. Moreover, the complainant has not parted with any property to the Accused persons, 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.”

22. Hence, there is no question of application of Section 417 of the Indian Penal Code to the alleged facts and circumstances of the case against the Accused Persons including the Petitioner.

23. **Section 465** of the Indian Penal Code provides for punishment for forgery. 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.”

24. 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.”

25. **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

26. 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. Here, 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)

27. Hon'ble Supreme Court in Randheer Singh Vs.

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.

28. 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, Rameshwar

Pandey has executed the sale-deed in regard to the land in question in favour of his co-Accused, claiming to be son of Ramchandra Pandey who has already died. Hence, the sale-deed in question is not a forged document. It is genuine one. Whether the sale-deed in question conveys title to the transferee is a legal question to be decided by competent Civil Court. But Sections 465 of the Indian Penal Code does not get attracted against the Accused Persons including the Petitioner.

29. As such, no offence as punishable under Section 465 of the Indian Penal Code is made out in the case on hand.

30. Hence, in my view, the complaint does not disclose any offence, much less any offence under Sections 417 and 465 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 and the impugned order passed by Ld. Magistrate is not sustainable in the eye of law. The application stands allowed, accordingly.

31. I also find that the impugned order against the petitioner is not sustainable in view of the provisions of Section

197 Cr.PC which provides protection to Public Servants against prosecution for any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, debarring any court to take cognizance of such offence, except with the previous sanction of the appropriate government. In the case on hand, undisputedly no such sanction has been granted against the petitioner and as per the allegation, the petitioner was Sub-Registrar, Gopalganj at the time of registration of the sale deed in question. Needless to say that registration of sale deed is part of official duty of any Sub Registrar of any district. Hence, in the case on hand, sanction was required before taking cognizance of the alleged offence and issuing summons against the Petitioner. Hence, the impugned order is liable to be quashed under section 482 Cr.PC on this ground also. Reliance is placed on the following authorities:

- (i) Shadakshari Vs. State of Karnataka, AIR 2024 SC (Criminal) 271
- (ii) D. Devaraja Vs. Owais Sabeer Hussain, (2020) 7 SCC 695
- (iii) Sankaran Moitra Vs. Sadhna Das , (2006) 4 SCC 584
- (iv) State of Orissa Vs. Ganesh Chandra Jew, (2004) 8 SCC 40
- (v) State of Orissa Vs. Ganesh Chandra Jew, (2004) 8 SCC 40,
- (vi) P.P. Unnikrishnan Vs. Puttiyottil Alikutty, AIR 2000 SC 2952
- (vii) S.B. Saha & Ors. Vs. M.S. Kochar, AIR 1979 SC 1841

32. Accordingly, the present petition is allowed,

quashing and setting aside the impugned order dated 20.03.2013
passed by Ld. Additional Chief Judicial Magistrate-V,
Gopalganj in Criminal Complaint Case No. 3163 of 2012 with
reference to the Petitioner.

(Jitendra Kumar, J.)

Chandan/
Ravishankar-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.06.2024
Transmission Date	20.06.2024