

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50128 of 2018

Arising Out of PS. Case No.-583 Year-2013 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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1. Munna Gope, Son of Late Devnarain Gope, Resident of Gaurhapar, Post Office Barhauna
 2. Nasib Lal Singh, Son of Hajarilal Yadav, Resident of Village Gujarchak, Both are in Police Station - Chandi, District - Nalanda.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Indradeo Prasad, Son of Late Chhatradhari Prasad, Resident of Gaurhapar, Post Office Barhauna, Police Station Chandi, District - Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ravi Shanker Pankaj, Adv.
For the State : Mrs. Asha Kumari, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 01-05-2024 The petitioners are arrayed as accused persons in Complaint Case No. 583C of 2013, wherein the learned Judicial Magistrate, Ist Class, Hilsa, Nalanda took cognizance of offences punishable under Sections 417/ 468/323/504 of the I.P.C., on the basis of the Court complaint filed by the opposite party no. 2 against the petitioners.

2. It is the case of the opposite party no. 2 that the mother of the complainant during his minority sold out a piece of land by virtue of a registered deed of sale mentioning the boundary of the said land in favour of petitioner no. 2, in the year 1991. It is further contended by the opposite party no. 2 in



his complaint that petitioner no. 2 subsequently sold out the land to petitioner no. 1. It is alleged that at the time of execution of sale deed, the petitioner no. 2 surreptitiously with the dishonest and fraudulent intention, in order to cause wrongful loss to the mother of the opposite party no. 2, wrote down the measurement of the land wrongly as 87 decimals in place of 81 decimals. When the said land was acquired for construction of a bypass road by the State Government, the above mentioned fact of cheating came to the knowledge of opposite party no. 2 for the first time and he filed a complaint in the year 2013.

3. Having heard the learned Advocate for the petitioners and on careful perusal of the entire materials on record, this Court finds that at the time of taking cognizance, the trial court failed to consider the provision contained in Section 468 of the Cr.P.C. Section 468 of the Cr.P.C. states as follows:-

“S. 468. Bar to taking cognizance after lapse of the period of limitation

Description

- 1. Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in Sub-Section (2), after the expiry of the period of limitation.*
- 2. The period of limitation shall be—*
 - 1. six months, if the offence is*



punishable with fine only;

2. one year, if the offence is punishable with imprisonment for a term not exceeding one year;

3. three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

3. For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

4. Thus, in connection with the offence complained of, the period of limitation shall be three years, if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years. Therefore, in view of the provision under Section 468 (2) (C), the complainant ought to have filed the application within three years from the date of offence as the complaint is filed after a lapse of about 22 years, the learned Trial Judge committed a jurisdictional error in taking cognizance of offence and the order of taking cognizance by the learned Trial Judge is abuse of the process of the Court.

5. Moreover, it is submitted by the learned Advocate for the petitioners that the dispute between the parties is



essentially civil in nature for which the opposite party no. 2 has already filed a civil suit.

6. In view of the above discussion, this Court finds that the Complaint No. 583C of 2013 is hopelessly barred by limitation.

7. Accordingly, the instant Cr. Misc. is allowed.

8. The order of taking cognizance dated 04.12.2015 by the learned Judicial Magistrate, Ist Class, Hilsa, Nalanda is quashed and set aside.

9. This disposes of the instant application.

(Bibek Chaudhuri, J)

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