

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5337 of 2017

Arising Out of PS. Case No.-1323 Year-2015 Thana- KHAGARIA COMPALINT CASE
District- Khagaria

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Sheikh Anwar @ Md. Anwar son of Late Md. Sami Ahmad, Resident of
Village- Mushkipur, P.S.- Gogri, District- Khagaria.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Javed Iqbal, Son of Late Mansoor Hassam, Resident of Village- Mushkipur,
P.S.- Gogri, District- Khagaria.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Dronacharya, Advocate
For the Opposite Party/s	:	Mr. Chandra Bhushan Prasad, APP
For the O.P. No. 2	:	Mr. Ebadur Rahman Shakeb, Advocate
		Mr. Majid Mahboob Khan, Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 22-01-2024 1. Heard learned counsel for the petitioner and

learned APP for the State along with learned counsel for the O.P.

No. 2.

2. The learned counsel for the petitioner submits that

the present quashing application has been filed seeking quashing

of the order dated 08.03.2016 passed by the learned Judicial

Magistrate, 1st Class, Khagaria in Complaint Case No. 1323(C)

of 2015 whereby cognizance of offence under Section 504 of

the IPC has been taken.

3. The learned counsel for the petitioner next submits

that from perusal of the allegation as alleged in the complaint, it



would manifest that the dispute is purely civil to which a criminal colour has been given. It is further submitted that in the nature of allegation as alleged in the complaint, prima facie, no offence under Section 504 of the IPC is made out. It is further submitted that O.P. No. 2 herein instituted the aforesaid complaint alleging therein that his grandmother had purchased 12 *Katha* 18 *dhurs* of land as detailed in the complaint from one Sheikh Leyaquat and the petitioner despite being aware that the land belongs to the grandmother of the O.P. No. 2 applied for creation of *Jamabandi* of the land in question before the DCLR, Gogri which was rejected, thereafter, he filed an appeal being *Jamabandi* Creation Appeal No. 38 of 2013-14, but the same also came to be dismissed by the Additional Collector, Khagaria, thereafter it is alleged that he committed fraud and fraudulently got created *Jamabandi* No. 2799 in his favour and also obtained rent receipt with the help of one Kailash Prasad who was the Revenue *Karmchari* at the relevant time.

4. The learned counsel next submits that from perusal of the allegation as alleged in the complaint, it would manifest that the entire allegation hinges around the fact that the petitioner herein committed fraud in getting the *Jamabandi* of the land registered in the name of the grandmother of the O.P.



No. 2 created in his name. It is further submitted that if what has been alleged in the complaint is true, in that event, the remedy of the O.P. No. 2 lies before a Court of competent civil jurisdiction. It is also submitted that the learned Magistrate based on inquiry of the witnesses, prima facie, did not find it to be a fit case under Sections 406 and 420 of the IPC but then took cognizance of offence under Section 504 of the IPC which as submitted earlier in nature of allegation is not made out.

5. The learned APP for the State along with the learned counsel for the O.P. No. 2 rebuts the submission of the learned counsel for the petitioner but are not in a position to rebut the submission of the learned counsel for the petitioner that in the nature of allegation, prima facie, no offence under Section 504 of the IPC is made out.

6. The learned counsel appearing on behalf of the O.P. No. 2 submits that the O.P. No. 2 also filed Criminal Revision No. 33 of 2016 against the order taking cognizance before the Court of learned Sessions Judge, Khagaria in the year 2016, but the same till date is pending consideration, it is further submitted that in the event if the learned Sessions Judge interferes with the order of cognizance which is impugned in the present quashing application and remands the matter back to the



learned Trial Court for deciding the issue afresh, as the the O.P. No. 2 in Criminal Revision No. 33 of 2016 has challenged the order of cognizance on the ground that cognizance has not been taken under the relevant sections of the IPC.

7. The learned counsel for the petitioner rebuts the submission of the learned counsel for the O.P. No. 2 and submits that no doubt the O.P. No. 2 approached the learned Sessions Judge, Khagaria in the year 2016 by filing the aforesaid criminal revision, but then the same is pending till date and the pendency of the revisional case before the learned Sessions Judge cannot be ground for not entertaining the quashing application if prima faice no offence under Section 504 of the IPC is made out. It is also submitted that it appears that the O.P. No. 2 after filing criminal revision in the year 2016 slept over his right.

8. Considering the submission made by the learned counsel for the petitioner, the Court, prima facie, is satisfied that no offence under Section 504 of the IPC is made out against the petitioner in the nature of allegation as alleged in the complaint, as such, the order dated 08.03.2016 passed by the learned Judicial Magistrate, 1st Class, Khagaria in Complaint Case No. 1323(C) of 2015 whereby cognizance of offence under Section 504 of the IPC has been taken, **is hereby quashed.**



**9. Accordingly, the present quashing application
stands allowed.**

(Satyavrat Verma, J)

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