

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34890 of 2017

Arising Out of PS. Case No.-544 Year-2016 Thana- LAKHISARAI District- Lakhisarai

-
1. Rajniti Prasad Gupta, Son of Late Surendra Prasad Gupta,
 2. Sudha Devi, W/o Rajniti Prasad Gupta.
 3. Sushila Devi W/o Surendra Yadav,
All R/o Village- Kiul Basti, P.S.- Lakhisarai, District- Lakhisarai.
- Petitioners

Versus

1. State of Bihar
 2. Smt. Saro Devi, W/o Ganesh Saw @ Latru Sao, R/o Village- Kiul Basti,
P.S.- Lakhisarai, District- Lakhisarai, Present Residing of Village- Salauna
Chak, Phulwari Tola, P.S.- Lakhisarai, District- Lakhisarai.
- Opposite Parties

Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar Raju, Advocate
For the Opposite Party/s : Mr. Ram Sevak Choudhary, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 27-06-2024

Heard learned counsel for the petitioner and
learned APP appearing for the State.

2. The present application has been filed by the petitioners for quashing the order dated 28.03.2017 passed by learned Chief Judicial Magistrate, Lakhisarai in Lakhisarai P.S. Case No.544 of 2016 whereby and whereunder the learned Jurisdictional Magistrate has taken cognizance for the offences punishable under Sections 418, 420, 467, 468 and 120B read with 34 of the Indian Penal Code (for short 'IPC') against the petitioners.



3. The prosecution case is based upon complaint, which was the basis of the present FIR, filed by the complainant, namely, Smt. Saro Devi in which it is stated that due to feud relation with her husband, an oral partition was held in the year 2012. After partition, her husband executed sale deeds in favour of accused persons no. 2 to 6. She further alleged that after knowing every fact, accused nos. 7 to 9 became witness and put their signature on sale deed. It is further alleged that she has executed the sale deed in favour of Umakant Singh for her needs, when purchaser went to taking possession of land, the accused persons 2 to 6 started disturbing and scrambling with him. Thereafter, the complainant knew that land was sold prior by her husband. She further alleged that her share was also sold by her husband (accused No.1) to the petitioners fraudulently.

4. It is submitted by learned counsel appearing for the petitioners that admittedly the land in issue was sold by the husband of complainant to the petitioner but, as it was sold when the son of complainant was minor, the



present false implication was raised. It is submitted that from perusal of a complaint petition, no *prima facie* case appears to be made out against the petitioners, who are the *bona fide* purchasers and in the garb of dispute between the son of complainant and also with her husband related with land in issue, the present false criminal case was lodged against the petitioners out of ulterior and oblique motive as to get it return back after execution of the *bona fide* sale deed. While arguing this matter, learned counsel appearing on behalf of the petitioners took shelter of legal reports of Hon'ble Supreme Court as passed in the matter of **State of Haryana and Ors. Vs. Bhajan Lal and Ors** reported in **(1992) Supp (1) SCC 335** and **Usha Chakraborty and Anr. V. State of West Bengal and Anr.** reported in **2023 SCC Online SC 90-**.

5. Notice has been served upon opposite party no.2, where she appears represented through advocate of her choice but, counsel for opposite party no.2 failed to join the present proceeding on repeated calls.

6. It would be apposite to reproduce para-102 of



the legal report of Hon'ble Supreme Court as passed in the matter of State of **Haryana vs. Bhajan Lal** (supra) as under-

'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 Act concerned



(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 Act concerned, 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."

7. It would further be apposite to reproduce para 6 of legal report of Hon'ble Supreme Court as passed in the matter of **Usha Chakraborty (supra)**, which is as under:-

6. In **Paramjeet Batra v. State of Uttarakhand**¹, this Court held:—

"12. While exercising its jurisdiction under Section 482 of the Code of 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 the 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."

8. In view of aforesaid factual and legal submissions and by taking note of fact as entire proceedings appears out of land dispute, where petitioners are *bona fide* purchasers of land, which is an admitted position through



complaint petition, suggesting no *prima facie* case made out against the petitioners. Moreover, the dispute between the parties are civil in nature, which has been given a cloak of criminal offence.

9. Accordingly, by taking a guiding note of **Bhajan Lal case** (supra) and also of **Usha Chakraborty case** (supra), the order of cognizance dated 28.03.2017 passed by learned Chief Judicial Magistrate, Lakhisarai in Lakhisarai P.S. Case No.544 of 2016 with all its consequential proceedings *qua* petitioners is, hereby, quashed/set aside.

10. The application stands allowed.

11. Let office is directed to send a copy of the judgment to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.06.2024
Transmission Date	29.06.2024

