

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21393 of 2021

Arising Out of PS. Case No.-233 Year-2012 Thana- SARAN COMPLAINT CASE District-
Saran

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Binay Kumar Gupta S/o Late Rameshwar Prasad Gupta Resident of Mohalla-
Gandhi Chowk, Police Station-Chapra Town, District-Saran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Awadhesh Kumar Gupta S/o Late Damodar Prasad Gupta Resident of
Mohalla-Gandhi Chowk, P.S.-Chapra Town, District-Saran.
3. Santosh Kumar Gupta S/o Late Damodar Prasad Gupta Resident of Mohalla-
Gandhi Chowk, P.S.-Chapra Town, District-Saran.
4. Manoj Kumar Gupta S/o Late Damodar Prasad Gupta Resident of Mohalla-
Gandhi Chowk, P.S.-Chapra Town, District-Saran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Dr. Rajesh Kumar Singh, Advocate
For the Opposite Party/s : Mr. Yogendra Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 01-03-2024 Heard the parties.

2. This application has been filed for quashing the order dated 13.02.2020 passed by the Additional Sessions Judge-V, Saran at Chapra *vide* Cr. Revision No. 202 of 2019 affirming the order dated 17.07.2019 passed by the Chief Judicial Magistrate, Saran at Chapra *vide* Trial No. 177 of 2019 whereby the court below has held that trial is barred under Section 300 Code of Criminal Procedure.

3. Brief facts of the case are that the petitioner filed complaint case No. 233/283 of 2012 against the opposite parties with allegation that the opposite parties got the deed of gift



executed in their favour by the father of the accused persons. Father of the accused persons mortgaged the land with Punjab National Bank, Chapra and obtained loan of Rs. 50 lacs in collusion with the Manager of the Bank and accused persons sold the mortgaged property to different persons and committed fraud and cheating. The aforesaid complaint case No. 233/283 of 12 under Section 420, 426, 342, 467, 468, 471, 384, 120(B), 506/34 of the Indian Penal Code was dismissed after enquiry under Section 203 Cr.P.C. Against the order of dismissal of complaint, the revisionist preferred Criminal Revision No. 205 of 2013 which was allowed and learned Chief Judicial Magistrate took cognizance of offence under Sections 420, 467, 468, 120(B) of the Indian Penal Code against the respondents. Three witnesses were examined before charge and a petition under Section 245 Cr.P.C. was filed on 13.06.2017 which was not disposed of. On 22.05.2018 the accused persons filed an application under Section 300 Cr.P.C., a rejoinder to the petition dated 22.05.2019 was filed by the petitioner and *vide* order dated 17.07.2019, the application filed by the respondents was allowed. Being aggrieved by the same, petitioner preferred Criminal Revision No. 2002 of 2019 before the Sessions Judge, Saran at Chapra which was dismissed *vide* order dated



13.02.2020 affirming the finding of the Chief Judicial Magistrate, Saran.

4. Learned counsel for the petitioner submits that learned courts below have passed the aforesaid orders only on the basis of conjecture and surmises and as such, the impugned orders are bad in the eye of law as well as on the facts. He further submits that both the learned courts below have failed to consider the order passed by the D.R.T. Patna, dated 06.01.2012. It is further submitted that in the present complaint case, date and time of the occurrence, place of the occurrence, complaint as well as accused persons are not exactly the same persons as such, orders dated 13.02.2020 passed by the Additional Sessions Judge-V, Saran at Chapra *vide* Cr. Revision No. 202 of 2019 and 17.07.2019 passed by the Chief Judicial Magistrate, Saran at Chapra *vide* Trial No. 177 of 2019 are fit to be quashed.

5. On the other hand, learned A.P.P. for the State opposes the application and submits that from bare perusal of the impugned order it is apparent that the facts of both the cases are similar. He further submits that petitioner is none other than own full brother of the informant. It is further submitted that from perusal of the Cr. Appeal No. 53/16 it is apparent that the



full brother of the petitioner namely, Rajiv Gupta has earlier lodged Chapra Town P. S. Case No. 114/12 with same and similar allegations with the only difference that in this case, Bank Manager was also made accused but not summoned under Section 204 Cr.P.C. It further appears that virtually on the same set of facts which ended in conviction and appeal, respondents were acquitted and the present application has been filed as such, there is no illegality or infirmity in the orders passed by the court below. Hence, no interference is required by this Hon'ble Court.

6. Heard the parties and perused the materials available on record. From the plain reading of both the cases i.e., Cr. Revision No. 202 of 2019 and Trial No. 177 of 2019 it is apparent that the allegation against the petitioner in both the cases are same with slight development that petitioner being in collusion with the manager of the bank sold the property to different persons and have committed fraud and cheating. In the present case, the Bank Manager, PNB Hathua Market Branch was also made accused but he was not summoned as an accused. It is settled law that no person shall be prosecuted for the same offence more than once- the trial of the petitioner in another case is barred under Section 300 Cr.P.C. Both the cases contain



same facts and relates to the same occurrence and the allegation against the petitioner in the present case are also same. Since the petitioner has already been prosecuted for the same offence, hence, the trial of the petitioner in the present case is barred under Section 300 Cr.P.C. It further appears that this application is nothing but second revision in the garb of an application under Section 482 Cr.P.C. Learned counsel for the petitioner has failed to point out any irregularity in the impugned orders and this Court also does not find any illegality or infirmity in the impuged order dated 13.02.2020 passed by the Additional Sessions Judge-V, Saran at Chapra *vide* Cr. Revision No. 202 of 2019 and the order dated 17.07.2019 passed by the Chief Judicial Magistrate, Saran at Chapra *vide* Trial No. 177 of 2019

7. Accordingly, this application stands dismissed.

(Prabhat Kumar Singh, J)

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