

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45823 of 2023

Arising Out of PS. Case No.-159 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

=====

SHAMBHU PRASAD Son of Late Raghunandan Prasad Resident of Mohalla
- Bakarganj Bajaja, P.s. - Pirbahore, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Smt. Neelam Gupta Resident of Bhutnath Road, P.S. - Agamkuan, Distt. -
Patna 20, Permanent resident of Mohalla - Chitragupta Marg, New Area
Jakkanpur, P.O. - G.P.O., P.S. - Jakkanpur, District - Patna

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar Sharma, Advocate Mr. Alok Anand, Advocate
For the Opposite Party/s	:	Mr. Umanath Mishra, APP
For the Opposite Party no.2	:	None

=====

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 09-07-2024

1. Heard learned counsel for the petitioner and learned
APP for the State. No one appeared on behalf of the opposite
party no.2.

2. The petitioner has filed the instant application
praying for quashing the order dated 20.5.2016 passed in
Complaint Case no. 159 of 2016 whereby the learned Additional
Chief Judicial Magistrate, Patna City, District Patna was pleased
to take cognizance under sections 323, 384, 379 and 468 of the
Indian Penal Code.

3. The prosecution case as per the complaint filed by



the opposite party no.2 on 25.2.2016 in the Court of learned Additional Chief Judicial Magistrate, Patna City alleges *inter alia* that the husband of the complainant namely Uday Gupta and the accused Om Prakash Gupta are full brothers. The complainant along with her husband shifted to Delhi in the year 1990. Her father-in-law having died on 5.6.2013, the complainant and her husband returned in July 2013 with intention to settle at Patna. On their return, it transpired that unknown accused persons were residing in the house and it was thereafter disclosed by Om Prakash Gupta that the ownership of the property having been transferred by his father by executing a will in his favour, he was now the owner. The complainant states that the will is false and has been made by Om Prakash Gupta after the death of his father. It is further stated that the petitioner and Shankar Prasad are both maternal uncle of Om Prakash Gupta and Uday Gupta (complainant's husband). The complainant tried to enter into a compromise with Om Prakash Gupta on which the petitioner and his brother ie the maternal uncle of her husband came forward and demanded Rs. 5 lakhs on behalf of Om Prakash Gupta. It is further stated that on 22.1.2016, Om Prakash Gupta and Reeta along with two unknown persons snatched her purse, pushed her on the road



and threatened her. As the police personnel at Agamkuan Police Station did not take any step inspite of the matter being reported, hence the instant complaint.

4. On the statement of the complainant, Complaint Case no. 159 of 2016 was registered in the Court of learned Additional Chief Judicial Magistrate, Patna City. The statement of the complainant was recorded on S.A and the statement of other witnesses were recorded in support of the complaint. By order dated 20.5.2016 passed in Complaint Case no. 159 of 2016, the learned Additional Chief Judicial Magistrate, Patna City was pleased to take cognizance in the case. It is against this order that the instant application has been preferred.

5. It is submitted by learned counsel appearing for the petitioner that the petitioner happens to be the maternal uncle of the husband of the complainant Uday Gupta and also of one of the accused Om Prakash Gupta. Their father Raghunandan Prasad executed a will in favour of one of his sons namely Om Prakash Gupta. The complaint has been filed by the wife of other son Uday Gupta. It is submitted that the dispute as stated in the complaint is purely civil in nature between two brothers ie the husband of the complainant Uday Gupta and his elder brother Om Prakash Gupta in whose favour the will has been



executed. A letters of administration case being LOA Case no. 609 of 2014 has been filed by Om Prakash Gupta and is pending in the Court of learned District Judge, Patna wherein the husband of the complainant Uday Gupta has appeared and both Uday Gupta and the complainant have filed objection petition and are contesting the said letters of administration case. It is submitted that the dispute being purely civil in nature, the instant application be allowed. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Indian Oil Corporation vs. NEPC India Ltd.; (2006) 6 SCC 736** . It is further submitted that even accepting the allegations levelled in the complaint as it is, so far as the occurrence of 22.1.2016 is concerned, there is no allegation against this petitioner. The allegation against the petitioner is only to the effect that pursuant to the dispute with respect to the will executed by their father, for which LOA Case no. 609 of 2014 is pending between the parties, in the negotiations between them, the petitioner who happens to be the maternal uncle of both the brothers had made a demand of Rs. 5 lakhs on behalf of the accused brother from the husband of the complainant.

6. The application is opposed by learned APP for the State.



7. Having heard learned counsel for the parties and having perused the material on record, from the contents of the petition it transpires that the substance of the allegation is to the effect that in a dispute with respect to the immovable property in question, the accused Om Prakash Gupta claims that the same has been transferred in his favour by his father who has executed a will to the said effect. The said Om Prakash Gupta has already filed a case for grant of letters of administration of the said will and LOA Case no.609 of 2014 is pending in the Court of learned District Judge, Patna wherein objections have been filed both by the husband of the complainant who also happens to be one of the sons of the testator and the complainant. So far as this petitioner is concerned, it is not in dispute that he happens to be the maternal uncle of both the husband of the complainant as also the accused Om Prakash Gupta. The complainant in the complaint petition states that on her entering into negotiation with her husband's brother, this petitioner along with his full brother who have not only signed the will as witness but also made a demand of Rs. 5 lakhs on behalf of Om Prakash Gupta. With respect to the alleged occurrence at Bhoothnath Road on 22.1.2016, no allegations have been levelled against this petitioner.



8. The Hon'ble Supreme Court in the case of **Indian Oil Corporation** (*supra*) has mentioned about the growing tendency in business circles to convert purely civil dispute into criminal cases on account of prevalent impression that civil law remedies are time consuming. Paragraph no. 13 of the judgment is extracted herein below for ready reference :-

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

“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.”

9. Having heard learned counsel for the parties and having perused the material on record, specially the contents of the complaint petition, this Court finds that even if the allegations levelled therein against the petitioner are accepted at their face value, no offence whatsoever is made out against the petitioner. The dispute, if any, is purely civil in nature. Continuance of the criminal proceedings against the petitioner would clearly be an abuse of the process of the Court.

10. In view of the facts and circumstances stated herein above, the Court is of the opinion that the order impugned dated 20.5.2016 passed in Complaint Case no.159 of 2016 by the learned Additional Chief Judicial Magistrate, Patna City, District- Patna, so far as it relates to the petitioner is not



sustainable and is hereby quashed.

11. The application is allowed.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	15.05.2024
Uploading Date	09.07.2024
Transmission Date	

