

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44299 of 2023

Arising Out of PS. Case No.-535 Year-2022 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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LAV KUMAR SINGH Son of Late Rajeshwar Singh Resident of village -
Chota Bariyarpur, Near Bye Pass Chowk, ward no. 37, P.S. - Chatauni, Distt. -
East champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Madan Prasad Sah Son of Basanti Sah Resident of village - Chandra Rahiya,
P.s. - Motihari Muffasil, Distt. - East Champaran

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dipak Kumar , Advocate
For the Opposite Party/s : Mr. Murli Dhar , APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

3 01-04-2024 Heard learned counsel for the parties.

2. This application has been filed for quashing order dated 29.04.2023 Additional Sessions Judge-XVCI, East Champaran, Motihari hereinafter referred to as “ Additional Sessions Judge ” in Cr. Revision No. 170/2022, by which the learned Additional Sessions Judge has been pleased to set aside the order dated 02.06.2022 passed by Judicial Magistrate, 1st Class, East Champaran, Motihari in connection with Complaint Case no. 535/2022 and Enquiry no. 28/2022 whereby and whereunder the learned Judicial Magistrate 1st Class has dismissed the Complaint case and the learned Additional Sessions Judge further directed to look into the matter and pass



order afresh in accordance with law and has allowed the said Criminal Revision.

3 . During pendency of the case , I.A No. 1 of 2023 has been filed by the petitioner for amending in the prayer portion as the Judicial Magistrate 1st Class, Motihari East Champaran has taken cognizance against the accused persons under sections 406, 420, 468 read with Section 34 of Indian Penal Code in pursuance of the order dated 29.04.2023 passed in Revision Case No. 170 of 2022 by the learned Additional Sessions Judges. The I.A. No. 1 of 2023 shall be treated as part of the petition .

4. The case of the complaint is that one Madan Prasad Sah (Opposite Party No. 2) has filed a Complaint Case No. 535/2022 against four persons, namely *Nagina Sah*, *Rakesh Prasad*, *Lav Kumar Singh (Petitioner)*, and *Dhananjay Kumar Thakur*, and alleged that land bearing Khata No. 213, Plot No. 1134, measuring 3 Katha 16 dhurs, was in the name of the complainant named Nagina Sah, which was obtained by the sale deed, and the plot was given to Basanti Sah, father of the complainant and mother of the complainant, for maintenance. It is further alleged that Nagina Sah and Rakesh Prasad wanted to grab the property fraudulently, and on the date of occurrence,



Nagina Sah, with intent to cheat, fabricated a document in favor of Lav Kumar Singh (the petitioner), showing the alive father as dead in the sale deed, and Rakesh Sah and Dhananjay Kumar Thakur were witnesses and identifiers on the sale deed. It is further alleged that the complainant came to know about it from the villagers and obtained the certified copy of sale deed No. 2368 dated February 21, 2022, and when the complainant went to inquire from Nagina Sah and Rakesh Prasad, they abused and assaulted the complainant. Thereafter, the complainant went to the local police station on March 9, 2022, but the concerned police advised him to file a case in court. The complainant filed a complaint case under Complaint Case No. 535/2022 on March 11, 2022.

5 . Learned counsel for the petitioner submits that it is primarily a dispute of civil nature, and in order to settle the civil dispute, this false and concocted case has been lodged. The petitioner is the purchaser of the land in question from *Nagina Sah*. He next submitted that it is also not in dispute that the land in question belongs to *Nagina Sah*, whose father is *Basanti Sah*, and the only allegation of the opposite party no. 2 is that his father, *Basanti Sah*, had given the land in question to him as he had taken care of him during the time of his illness and that



Nagina Sah did not sell the land to the petitioner. He next submitted that from the perusal of the complaint, it is apparent that the only allegation is that *Nagina Sah*, while disputing the sale deed in favor of the petitioner, records that his father is no more, whereas the facts remain that *Basanti Sah* (father of of opposite party No. 2) is still alive. Since , the sale deed showed his father as dead, that amounted to a fraudulent act on the spot. He lastly submitted that no reason has been assigned on what basis the petitioner has been made accused in this case except being the purchaser of land from *Nagina Sah*. Lastly, it is submitted that even if the entire allegation leveled against this petitioner is considered to be true on its face value, no offense is made against this petitioner. At best, it is a case of civil nature, and the present complaint case is purely a civil dispute, and the present criminal proceeding is an abuse of the process of law. In this connection, learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Apex Court passed in the case of *Hon'ble Supreme Court* in *Murari Lal Gupta vs. Gopi singh* reported in (2005) 13 SCC 699 . And as such, the present petition is fit to be quashed.

6. On the other hand learned counsel for the opposite party No. 2 vehemently opposes the submission made on behalf



of the petitioner and submits that petitioner has got the sale deed executed in his favour by means of illegal and fraudulent act. There is sufficient material on record against the petitioner and it cannot be said that prima facie no case is made out against this petitioner. Hence, no interference is required by this court at this stage.

7. Having heard submissions advanced by learned counsel appearing on behalf of the parties and perusing the materials available on record, I am satisfied that the criminal proceeding initiated by the opposite party against the petitioner is wholly unwarranted. Petitioner is a mere purchaser and who has purchased the land in question after payment of due consideration money and got the sale deed executed. Therefore, upon consideration of the relevant circumstances, and in light of the law laid down by the Hon'ble Apex Court in the case of *Hon'ble Supreme Court in Murari Lal Gupta vs. Gopi singh* reported in (2005) 13 SCC 699 . The Complaint is an abuse of the process of Court and proceedings are liable to be quashed in view of the averments made in the Complaint are taken to be correct, yet the case for prosecution order under Sections 420, 406 and other allied sections of I.P.C are not made out. The complainant does not make any averment so as to infer any



fraudulent or dishonest intention of the petitioner from the inception of transaction. There is dispute of title between the parties for which title suit is already pending in the Civil Court. It can be said that a criminal colour has been given to a civil natured case .

8 . Accordingly, the quashing application is allowed and order dated 29.04.2023 Additional Sessions Judge-XVCI, East Champaran, Motihari in Cr. Revision No. 170/2022 is quashed with respect to this petitioner only .

9. This quashing application stands allowed.

10 . Needless to say that the opposite party No. 2 is at liberty to pursue such other remedy under the civil law as may be available to him.

(Prabhat Kumar Singh, J)

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