

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46376 of 2022

Arising Out of PS. Case No.-33 Year-2019 Thana- JEHANABAD COMPLAINT CASE
District- Jehanabad

-
1. PREMSHILA DEVI Wife of Jaykant Pathak Resident of village - Amra, P.S.- Parasi Arwal.
 2. Amit Kumar Son of Jaykant Pathak Resident of village - Amra, P.S.- Parasi Arwal.

... .. Petitioners

Versus

1. The State of Bihar Bihar
2. Smt. Kanti Devi Wife of Rampravesh Chaubey Resident of village - Sikarhatta Khurd, P.S.- Sikarhatta Kala, District - Bhojpur (Ara)

... .. Opposite Parties

Appearance :

For the Petitioners : Mr. Paras Nath
For the Opposite Parties : Mr. Anil Prasad Singh

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5 28-03-2024 Heard the parties.

2. This the second consecutive time when no one appeared for the learned Advocate for the O.P. No. 2 despite valid service of notice.

3. The present application has been filed for quashing order dated 19.09.2019 passed in Complaint Case No. 33 of 2019 by learned Judicial Magistrate - 1st Class, Arwal whereby and whereunder learned Magistrate has taken cognizance against the petitioners for the offences under Sections 420 and 323 of the IPC and ordered to issue summons against them.

4. The case of the complaint, in short, is that these



petitioners along with other accused persons have executed the sale deed of complainant, land measuring- 1 acre and 38 decimal and 1 acre and 65.5 decimal by impersonating some other lady in place of the complainant and got registered two sale deeds without any information to the complainant. It is further alleged that when the complainant asked about the execution of the sale deed, these petitioners along with other co-accused entered into the house of the complainant and assaulted her by means of fist and slap.

5. It is submitted by learned counsel for the petitioners that they are innocent and have been falsely implicated in the present case, on account of land dispute, O.P. No. 2 who is cousin-sister of the husband of the petitioner no. 1 and aunt of petitioner no. 2. He next submits that the land in question belongs to these petitioners and the *Jamabandi* of the same is in the name of these petitioners which is also existing in the Right of Record. It is further stated that petitioners have got the land registered through the sale deed or through deed of *Bakshishnama* executed in favour of the petitioner No. 1 & 2 by the father-in-law, mother-in-law and grandmother of the petitioners, respectively, in the years; 1992, 2014 and 2015 with respect to 208.5 decimal of land and thereafter the land was



mutated in their favour and L.P.C. has also been issued to the petitioners and accordingly, rent receipt has been granted and after executing sale deed by the petitioners in favour of co-accused *Kundan Kumar*, *Jamabandi* has been created in his name over which said *Kundan Kumar* has come in possession of the said land. He lastly submits that the present case is purely civil in nature and lodged only with a view to harass and humiliate the petitioners and, as such, no case under Section 420 of the IPC is made out against these petitioners. Rest of the allegations are super-addition to make the case grave. Present criminal proceeding has been initiated with an ulterior motive for wreaking vengeance on petitioners due to land dispute and, as such, continuation of criminal proceeding would amount to abuse of the process of court and as such the order of cognizance is bad in law and the present petition is fit to be quashed.

6. In this regard, learned counsel for the petitioners has placed reliance on a decision of the Hon'ble Supreme Court in case of *Joseph Salvaraj Vs. State of Gujarat and Ors.* Reported in *2011 SCC online SC 871*. In this case, the Hon'ble Supreme Court has observed that a person cannot be allowed to go through the rigmarole of a criminal prosecution for long



number of years even when admittedly a civil suit has already been filed against the accused persons. In the instant case, the Title Suit Bearing No. 09 of 2018 (as per paragraph “6” of the Supplementary Affidavit) is already pending between the parties.

7. However, learned counsel for the opposite parties vehemently opposed the submission made on behalf of the petitioner and submits that from bare perusal of the complaint petition, it is apparent that the land in question was executed by the petitioners fraudulently and by impersonating some other lady in place of the complainant and got registered two sale deed without giving any information to the complainant. It is further stated that when complainant came to know about the misconduct of the petitioners, she opposed the same but petitioners forcibly entered into her house abused her and also assaulted her with fist and slap and as such, there are sufficient materials available to take cognizance against the petitioner and no interference is warranted by this Hon’ble Court at this stage.

8. Having taken into consideration all the materials available on record and after hearing the learned counsel for the parties, I am satisfied that the criminal proceeding initiated by the opposite party against the petitioner is wholly unwarranted.



The Complaint is an abuse of the process of Court and proceedings are liable to be quashed in lieu of the averments made in the Complaint are taken to be correct, yet the case for prosecution order under Sections 420 and 323 of I.P.C is 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 .

9. Accordingly, the quashing application is allowed and order dated 19.09.2019 passed in Complaint Case No. 33 of 2019 by learned Judicial Magistrate - 1st Class, Arwal whereby and where under learned Magistrate has taken cognizance against the petitioners for the offences under Sections 420 and 323 of the IPC stands quashed with respect to these petitioners only.

10. This quashing application stands allowed.

(Prabhat Kumar Singh, J)

Gauravkr/-

U		T	
---	--	---	--

