

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36891 of 2016

Arising Out of PS. Case No.-144 Year-2015 Thana- MAHARAJGANJ District- Siwan

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1. Ganesh Mahto son of Saheb Mahto Resident of Village- Agya, P.S.- Goreya Kothi, District- Siwan.
 2. Ram Nath Sah @ Ramnath Mahto son of Late Dahari Sah
 3. Nagina Mahto son of Late Jagdeo Mahto
 4. Bankey Lal Mahto @ Bankey Mahto son of Late Ramprit Mahto
All are resident of Village- Gaur Bujurg, P.S.- G.B. Nagar, Dist- Siwan.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Dinanath Singh son of Late Haribansh Ray Resident of Village- Bajrahia, P.S.- G.B. Nagar, District- Siwan.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Akhileshwar Kumar Shrivastva, Advocate
For the O.P. No. 2	:	Mr. Ashok Kumar, Advocate
For the Opposite Party/s	:	Mr. Sri Ram Anurag Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

12 21-11-2024 Heard Mr. Akhileshwar Kumar Shrivastva, learned counsel for the petitioners, Mr. Ashok Kumar, learned counsel for the O.P. No.2 and Mr. Sri Ram Anurag Singh, learned APP for the State.

2. The instant criminal miscellaneous petition has been filed for quashing the order dated 14.03.2016 passed in Tr. Case No. 1609 of 2016, arising out of Maharajganj (G.B. Nagar) P.S. Case No. 144 of 2015 passed by the learned Sub - divisional Judicial Magistrate, Siwan, by which the cognizance against the petitioners for the



offences under Sections 419, 420, 467, 468, 471, 109 and 114 of the Indian Penal Code (in short 'IPC') has been taken from which being aggrieved, the petitioners have filed this petition.

3. Mr. Akhileshwar Kumar Shrivastva, learned counsel appearing for the petitioners submits that the father of the O.P. No.2 had earlier filed a Complaint Case No. 968(C) of 1981 against the petitioners under Section 467 of the I.P.C with the same allegations which have been made by the O.P. No.2 in his Complaint Case No. 2790 of 2014 in which the order impugned has been passed and the earlier said complaint had been dismissed with the acquittal of the petitioner and further the main dispute in between both the parties relates to a civil wrong and the O.P. No.2 has tried to give a colour of criminal wrong to the said dispute by filing his complaint. It is further submitted that the allegation levelled by the O.P. No.2 is based on a sale deed which was executed in the year 1980 and after the gap of 34 years, the O.P. No.2 has come up with the allegation of forgery and cheating in respect of the said sale deed by filing the complaint which shows that he has filed his complaint with malafide intention and the order impugned should be quashed as the entire criminal proceeding running against the petitioners in respect of the alleged wrong is a



complete abuse of the process of the court.

4. Learned counsel for the O.P. No. 2 and learned APP for the State has opposed the application for quashing and submits that there is sufficient *prima facie* material to attract the alleged offences of which cognizance has been taken by the learned trial court.

5. Heard both the sides and perused the order impugned and the relevant material. The petitioner has taken the plea that the father of the O.P. No. 2 namely, Late Haribansh Ray also filed a Complaint Case No. 968(C)/81 against the petitioners under section 467 of the I.P.C. with the similar allegations which have been made by the O.P. No. 2 in his Complaint Case No. 2790 of 2014 in which the order taking cognizance of the alleged offences has been passed. The complaint filed by the father of the O.P. No.2 resulted in acquittal of the petitioner by judgment dated 30.11.2011 and further the case of the O.P. No. 2 is based on the sale deed which is said to have been executed in the year 1980 but the complaint was filed by the O.P. No.2 with the allegations of cheating and forgery in the year 2014, after about 34 years. This court finds substance in the said submissions as in rebuttal of these pleas, no proper explanation has been given by the



learned counsel for the O.P. No.2 and it further appears that the main dispute which has arisen in between the petitioners and O.P. No.2 mainly attracts a civil wrong and the complainant has tried to give a colour of criminal wrong to the alleged civil wrong and this court is of the opinion that putting the petitioners on trial for the alleged wrong which is of civil nature will be complete harassment to the petitioners and the same would not serve the ends of justice as the O.P. No. 2 has filed his complaint to settle the alleged civil wrong. The learned court below has not applied its judicial mind properly while taking cognizance of the alleged offences as such the order impugned taking cognizance of the alleged offences as well as all further proceeding having arisen after the said cognizance against the petitioners in connection with Tr. Case No. 1609 of 2016, arising out of Maharajganj (G.B. Nagar P.S. Case No. 144 of 2015 are hereby set aside and the instant Criminal Miscellaneous petition stands allowed.

(Shailendra Singh, J)

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