# IN THE HIGH COURT OF JUDICATURE AT PATNA
**CRIMINAL REVISION No.67 of 2023**

Arising Out of PS. Case No.-92 Year-2020 Thana- NALANDA COMPLAINT CASE District- Nalanda

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GANESH SHANKAR VIDYARTHI Son of Late Ishwar Prasad, Resident of Village - Jorarpur, P.O.- Pachori, P.S.- Deepnagar, District - Nalanda, Pin - 803111.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Prabhat Kumar Mehta, Son of Late Suresh Prasad and Mother Late Chandrakanta Devi, Resident of Village, P.O. and P.S.- Telhara, District - Nalanda, Pin - 801301.
3. Smt. Simpi Kumari, Wife of Karu Kumar, D/o Ishwar Prasad, Resident of Village - Palni, P.S.- Manpur, District - Nalanda, Pin - 803216
4. Sambhu Prasad, Son of Indradev Mahto, Resident of Village - Koirai Bigha, P.S.- Katrisarai, District - Nalanda, Pin - 805105
5. Ishwar Prasad, Son of Shayam Mahto, Resident of Village - Sakuchidih, P.S.- Katrisarai, District - Nalanda, Pin - 805105
6. Kumar Vinod, Deed Writer, License No.- 136/2002, Registry Office, Rajgir, Nalanda, Pin - 803116

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. R.K.P. Singh, Advocate<br>Mr. Dharmesh Kumar, Advocate<br>Mr. Bal Bhushan Choudhary |
| For the Respondent/s | : | Mr. Nitya Nand Tiwary, Advocate<br>Mr. Subodh Kumar, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**

ORAL ORDER

6 30-04-2025 The instant revision is directed against an order dated 08th June 2022 passed by the learned Judicial Magistrate III (1st Class), Nalanda at Bihar Sharif in Complaint Case No. 92(C)/2020 whereby and whereunder he dismissed the complaint summarily under Section 203 of the CrPC. The petitioner in the capacity of power of attorney holder of one

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Bimla Devi has filed the instant revision challenging legality, validity and propriety of the impugned order dated 08th June 2022. The background of the dispute between the parties leading to the filing of the instant revision may be summarized as follows:- One Bimla Devi and Prabhat Kumar Mehta, opposite party no. 2 herein, inherited some landed property from their maternal side. Subsequent to such inheritance, a partition is effected between the said Bimla Devi and the Opposite party no. 2, namely, Prabhat Kumar Mehta, way back in 1970. Presently, Bimla Devi has been staying in England, therefore, she executed the power of attorney in favour of the opposite party no. 2 to look after and deal with the landed property which she got by way of partition on her behalf. Further, the case of the petitioner is that on 29th May 2019, the O.P. No. 2 who was arraigned as accused no. 1 in the trial court, executed a sale deed in respect of the property which fell in the share of the Bimla Devi by way of partition in favour of O.P. No. 3. The petitioner came to know about such wrongful execution of deed of sale on 15th December 2019. Immediately, she lodged a complaint on 27th January, 2020 in the Court of the learned Judicial Magistrate, Nalanda at Bihar Sharif. The learned Magistrate after initial inquiry under Section 200 of the CrPC, dismissed the complaint holding, *inter*

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*alia*, that the dispute between the parties is essentially a civil in nature relying upon the observation of the Hon'ble Supreme Court made in paragraph 8 of ***Mohd. Ibrahim v. State of Bihar,*** reported in ***(2009) 8 SCC 751.***

2. The said order is under challenge in the instant revision.

3. In order to come to a finding as to whether the impugned order suffers from any illegality or material irregularity, let me reproduce paragraph no. 8 of the above-mentioned report in ***Mohd. Ibrahim*** (Supra):

> *"8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Indian Oil Corpn. v. NEPC India Ltd. [(2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] ) Let us examine the matter keeping the said principles in*

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*mind."*

4. It is submitted by the learned Advocate for the petitioner that in some cases depending on the act and omission committed by the accused, the nature of dispute may both be civil and criminal consequences. If the act complaint of, is attributed to criminal liability, the accused persons cannot be escaped from facing trial in a criminal case on the ground that the dispute is essentially civil in nature. It is further submitted by him that the allegation against the accused no. 1 as made out in the petition of complaint is that he executed a false deed in favour of the accused no. 2 in respect of the property of which he had no right title and interest.

5. Section 463 of the IPC defines forgery. It says, whoever makes any false document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

6. Section 464 of the IPC states the circumstance as to how a false document can be made. Section 464 of the IPC runs thus:-

*"464. Making a false document.—3 [A person is said to make a false document or false electronic record*

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*First.—Who dishonestly or fraudulently—*

*(a) makes, signs, seals or executes a document or part of a document;*

*(b) makes or transmits any electronic record or part of any electronic record;*

*(c) affixes any [electronic signature] on any electronic record;*

*(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature], with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, singed, sealed, executed or affixed; or*

*Secondly.—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or*

*Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature]*

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*on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]*

*Explanation 1.—A man's signature of his own name may amount to forgery.*

*Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.*

*[Note.— The words 'digital signature' wherever they occur were substituted by the words 'electronic signature' by Amendment Act 10 of 2009.]"*

7. Section 465 of the IPC is the penal provision for the offence of forgery.

8. In the instant case, the petition of complaint contains an allegation that accused no. 1 executed a sale deed in favour of accused no. 2 falsely claiming to be the owner of the property.

9. The learned Magistrate did not read out the entire judgment of the Hon'ble Supreme Court in ***Mohd. Ibrahim***

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(supra). Paragraph no. 16 and following paragraphs of the aforesaid judgment runs thus:-

> *"**16**. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.*
>
> *17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined*

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*under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.*

***Section 420 IPC***

***18.*** *Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:*

*(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;*

*(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and*

*(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.*

***19.*** *To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived*

*(i) to deliver any property to any person, or*

*(ii) to make, alter or destroy*

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*wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).*

***20**. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused."*

10. Referring to the observation of the Hon'ble Supreme Court in paragraphs no. 16 to 20, it is submitted by the learned Advocate for the petitioner that the trial court committed a jurisdictional error in rejecting the complaint case under Section 203 of the CrPC. The learned Advocate appearing on behalf of the opposite parties, on the other hand, submits that during initial inquiry under Section 200 of the CrPC, complainant failed to produce any deed of partition in respect of the property in question. The accused no. 1 is claiming that no partition was effected in respect of the property in dispute between the parties. The property was exclusively owned by the opposite party no. 2 and he had right title and interest to execute the sale deed in favour of the O.P. No. 3. If the petitioner wants

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to challenge the sale deed, the proper remedy lies before the civil court. Therefore, it is submitted by the learned Advocate for the opposite parties that the trial court rightly passed the impugned order.

11. Having heard the learned counsels for the parties and respectfully relying upon the ratio laid down by the Hon'ble Supreme Court in ***Mohd. Ibrahim*** (supra), this Court likes to record at the outset that at the time of initial inquiry under Section 200 of the CrPC, it is the duty of the learned Judicial Magistrate to consider as to whether the complainant has been able to make out a *prima facie* case for further proceeding against the accused. It is not at the initial stage to come to a finding as to whether the complainant has a fair chance of success in the case.

12. If the allegation made by the complainant/petitioner is accepted at its face value, the property in question was owned by Bimla Devi. The opposite party no. 2 had no right title and interest over the property but he executed a false deed to transfer the property in favour of the accused no. 3 making a false document for the purpose of transferring the property *prima facie* makes out a case under Sections 465/468/471 read with Section 420 of the IPC.

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13. For the reasons stated above, this Court cannot concur with the impugned order dated 08th June 2022 passed by the learned Judicial Magistrate III (1st Class), Nalanda at Bihar Sharif in Complaint Case No. 92(C)/2020. Accordingly, the impugned order is set aside.

14. The trial court is directed to inquire into the complaint further, if he so wishes and pass appropriate order in Complaint Case no. 92(C)/2020.

15. With the above order, the instant criminal revision is allowed on contest. There shall however, be no order as to cost.

**(Bibek Chaudhuri, J)**

Suraj Dubey/-

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