

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23399 of 2016

Arising Out of PS. Case No.-106 Year-2010 Thana- PURNIA COMPLAINT CASE District-
Purnia

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1. Kanu Bhawal S/o Noni Gopal Bhawal, Resident of Mohalla - Khushkibagh (Kaptan Para), P.S. Sadar, District - Purnia
 2. Chanu Bhawal S/o Noni Gopal Bhawal, Resident of Mohalla - Khushkibagh (Kaptan Para), P.S. Sadar, District - Purnia.

... .. Petitioners

Versus

1. The State of Bihar.
2. Kajal Bhawal S/o Noni Gopal Bhawal, Resident of Mohalla - Khushkibagh (Kaptan Para), P.S.- Sadar, District - Purnia.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mrs. Namrta Mishra, Sr. Advocate Mr. Niraj Kumar, Advocate Ms. Saloni Sinha, Advocate
For the State	:	Mr. Anil Kr. Singh 1, APP
For the Informant	:	Mr. Nalin Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

5 20-03-2025 Heard Mrs. Namrta Mishra, the learned senior counsel for the petitioners, Mr. Nalin Kumar, the learned counsel appearing on behalf of the complainant (Opposite Party No. 2) and Mr. Anil Kumar Singh 1, the learned Additional Public Prosecutor appearing on behalf of the State.

2. The instant petition has been filed under Section 482 of the Code of Criminal Procedure (in short, Cr.P.C.) with a prayer to quash the order dated 18.01.2012 passed by the learned Judicial Magistrate 1st Class, Purnia in complaint case no. 106 of 2010, by which the learned Magistrate has taken cognizance of the offence punishable under Section 420 of the Indian Penal Code



(for short, IPC) read with Section 34 of the IPC against the petitioners and others.

3. The main ground taken by Mrs. Namrta Mishra, the learned senior counsel appearing on behalf of the petitioners to assail the order impugned is that the petitioners and Opposite Party No. 2, complainant, are own brothers and in between them, a partition had taken place on their mutual consent and on that basis, mutation had also been done with regard to the shares in the land in question as well as other lands and both the petitioners were allotted 11 decimals and 3 kari land each and almost the same shares were allotted to other co-sharers while the Opposite Party No. 2 was allotted 13 decimal and 9.3 kari land and out of the allotted share, both the petitioners transferred the land in question and the said partition as well as mutation was done as per the consent of all the co-sharers and the same was not challenged by the Opposite Party No. 2 by way of civil litigation till date and in this regard the copies of the relevant documents have been filed along with this petition as Annexure-2 series.

4. On the other hand, Mr. Nalin Kumar, the learned counsel appearing on behalf of Opposite Party No. 2 submits that the opposite party no. 2 was not given proper share in the ancestral property in view of the valuation of the lands and the signature of Opposite Party No. 2 was taken on the disputed sale deed by



deceiving him.

5. Considering the aforesaid submissions advanced by the learned counsel appearing for the petitioners as well as having gone through the averments made in the petition and also taking into account the contents of the complaint filed by the Opposite Party No. 2, this Court finds substance in the aforesaid grounds taken by the petitioners, as the instant matter mainly relates to a civil wrong and subjecting the petitioners to trial for the alleged offence would be complete harassment to them and the same would be also misuse of the process of law. The learned Magistrate has taken cognizance of the offence under Section 420 of the IPC read with Section 34 of the IPC in a mechanical manner without understanding the nature of allegation and the cognizance is completely bad in the eye of law as well as on the facts.

6. As such, the order impugned taking cognizance of the alleged offence is hereby set aside and the instant petition stands allowed.

(Shailendra Singh, J)

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