

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24939 of 2025

Arising Out of PS. Case No.-1975 Year-2022 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

=====

Amar Mohan Thakur S/O Late Suresh Mohan Thakur Resident of
Anandgarh Palace, Tilakmanjhi, P.s.- Tilkamanjhi, Dist.- Bhagalpur
... .. Petitioner

Versus

1. The State Of Bihar
2. Asha Chaudhary W/O Late Arun Kumar Chaudhary R/O Sinha
Library Road, P.S.- Kotwali, Dist.- Patna
3. Abhishek Chaudhary S/O Late Arun Kumar Choudhary R/O Sinha
Library Road, P.S.- Kotwali, Dist.- Patna
4. Abhinav Choudhary S/O Late Arun Kumar Chaudhary R/O Sinha
Library Road, P.S.- Kotwali, Dist.- Patna
5. Varun Kumar Choudhary @ Varun Kumar Chowdhary S/O Chedi
Choudhary @ Chedi Chowdhary R/O Sinha Library Road, P.S.-
Kotwali, Dist.- Patna

... .. Opposite Party

=====

Appearance :

For the Petitioner/s : Mr.Praveen Kumar, Advocate
For the Opposite Party/s : Mr.Navin Kumar Pandey, APPr

=====

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 25-04-2025

Heard Mr. Praveen Kumar, learned counsel
appearing for the petitioner and learned A.P.P. for the State.

2. The present petition preferred under Section 482
of the Code of Criminal Procedure (hereinafter referred to as
the 'Cr.P.C.') as to quash the the order dated 13.09.2024
passed in Criminal Revision No. 152/2023 as passed by
learned Additional Sessions Judge-XI, Bhagalpur and order
dated 18.10.2023 passed in Complaint Case No. 1975/2022/



Tr. No. 874/2022 as passed by Judicial Magistrate - 1st, Bhagalpur, Whereby the complaint petition and subsequent revision petition of the petitioner have been dismissed.

3. At the outset, it would be apposite to reproduce the order dated 18.10.2023 as passed in Complaint Case No. 1975 of 2022 by the learned Judicial Magistrate -1st Class, Bhagalpur, where complaint of the petitioner was dismissed under Section 203 of the Code of Criminal Procedure, 1973, which is under challenge through present petition, are as under:

**IN THE COURT OF RAHUL DUTTA, JUDICIAL MAGISTRATE,
FIRST CLASS, BHAGALPUR
Complaint Case No. 1975/2022
T.R. No. 874/2022
ORDER**

18.10.2023: The instant complaint has been filed by Amar Mohan Thakur against (1) Asha Choudhary (2) Abhishek Choudhary (3) Abhinav Choudhary and (4) Varun Kumar Choudhary for offences alleged to have been committed, which is punishable under section 467, 468 and 420 Indian Penal Code, 1860.

The story of the complainant in brief is that one Manorama Devi has made a false signature of Suresh Mohan Thakur on the Sale deed of land in dispute. It is further alleged that the accused persons in the complaint are using the alleged forged document for claiming title.

The complainant when examined on oath has reiterated that the signature appearing on the sale deed of land in dispute is not of Suresh Mohan Thakur. He further states that the present *Kewala* is made in Hindi, while his father i.e., Suresh Mohan Thakur wrote *Kewala* generally in English. The inquiry witnesses no.1 and 2 have in substance reiterated the facts stated by Complainant. It is further



stated by all the witnesses that the accused persons are trying to sell off the land in an illegal manner.

This Court on request of the complainant summoned the alleged forged sale deed from the possession of the persons named as an accused in the complainant.

Observations:

On comparing the signatures on passport of Suresh Mohan Thakur produced by the Complainant and alleged forged Sale deed, this Court found some variations in both the signatures. Variations in the signature could be on account of variety of factors. It is not safe and proper to infer forgery only on the basis of minor variations in both the signatures. The Signature on the sale deed is of year 1965, while the signature on passport is of the year 2010. From perusal of complaint, it appears that a Title Suit no 362/2017 has already been filed by the Complainant against accused alleging therein that survey entry in the name of Arun Kumar Choudhary is illegal and not operative. It is apt to mention here that Hon'ble Supreme Court in **Deepak Gaba and Ors v State of Uttar Pradesh, 2023 SCC OnLine SC 3** has stated that

“... this Court, in a number of cases, bar noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie of pure civil claims. These attempts are not to be entertained and should be dismissed at the threshold. To avoid prolixity, we would only like to refer to the judgment of this Court in Thermax Limited and Others v. K.M. Johny (2011) 13 SCC 412, as it refers to earlier case laws in copious detail. In Thermax Limited and Others (Supra), it was pointed that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully



scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

During the Course of Inquiry, this Court communicated to the Id. Counsel of the complainant that it is open for him to seek expert opinion on the point of variation of signatures. However, he chose not to seek expert opinion.

Carefully considering the allegations levelled in the complaint petition, the Inquiry witnesses, the documents produced during Inquiry and applying the above said principles laid down by Hon'ble Supreme Court, this Court has no hesitation in holding that Complainant could not produce evidence, which could lead this court to believe that the signature on Sale Deed is a forged one.

It is pertinent to mention that on perusal of Para 5 to Para 12, it appears that an attempt has been made by the complainant to invoke criminal jurisdiction of this Court by camouflaging allegations which appears to be Civil Claim.

It is also pertinent to mention that allegations in the complaint and the pre-summoning evidence on the record, when taken on face value do not constitute the offence of under section 420 of Indian Penal Code, 1860.

Therefore, this court is of the opinion that there is no sufficient grounds for proceeding with the case. In result, the case is **dismissed** under section 203 Code of Criminal, 1973. Office Clerk directed to consign the record to record room.



Dictated
Sd/-
18.10.2023
(Rahul Dutta)
Judicial Magistrate-I
Bhagalpur.”

4. It would further be apposite to reproduce
impugned order dated 13.09.2024, as passed by learned
Additional Sessions Judge-XI, Bhagalpur in Criminal Revision
No. 152/2023, which reads as under:

**In The Court of Additional Sessions Judge-XI,
Bhagalpur
District:- Bhagalpur, Bihar
Present (Vivek Kumar Singh)
Dated, Bhagalpur, the 13th day of September, 2024.
Criminal Revision No- 152/2023**

=====

==

**1. Amar Mohan Thakur, aged about 70 years, S/o Late
Suresh Mohan Thakur, R/o Anandgarh Palace,
Tilkamanjhi, P.S Tilkamanjhi, District Bhagalpur**

----- Revisionist

Versus

**1. The State of Bihar
2. Asha Choudhary, W/o Late Arun Kumar Choudhary
3. Abhishek Choudhary
4. Abhinav Choudhary
Both sons of Late Arun Kumar Choudhary
5. Varun Kumar Choudhary, S/o Chedi Choudhary**

-----Opposite Party

**For the Revisionist: Mr. Ram Kumar Mishra, Ld. Advocate
For the O.P. (State): Mr. Umesh Pd. Singh, Ld. A.P.P.**

=====

==

**Revision is directed against the
order dated 18-10-2023 passed
by the Learned Court of Sri
Rahul Dutta, J.M-1st Class,
Bhagalpur in complaint case no.
1975/2022.**

ORDER

1. This revision petition has been preferred by revisionist Amar



Mohan Thakur who is accused in the case of complaint case No. 1975/2022, against the impugned order dated 18-10-2023 passed of Ld. J.M-1st Bhagalpur dismissing the complaint of the revisionist against the opposite party under the provisions of Section 203 of Cr.P.C.

2. The revisionist has given a certificate in para No.(2) of his revision petition that he has not filed any revision petition either before the court of sessions or before the Hon'ble High Court Patna prior to filing of instant petition.

3. Heard Ld. counsel for the revisionist/petitioner and Ld. Counsel on behalf of state (Opposite Party).

4. Submission of Ld. Counsel of the revisionist is that impugned order dated 18-10-2023 has been passed by the Ld. Lower Court is bad in law and beyond the legal ambit as well without applying judicial view and mind. He has further submitted that the court below has passed the impugned order by ignoring the basic principles of law and has wrongly interpreted the judgment of Hon'ble Apex Court because mere existence and pendency of a civil proceeding does not preclude an aggrieved party from invoking jurisdiction of criminal court also, if there are allegations of both civil and criminal wrongs and it is incumbent upon the courts to apply its judicial mind and initiate criminal proceedings if the situation warrants. He has further submitted that the court below did not apply his judicial mind and dismissed the complaint without entering into the merit and prima facie case for the purpose to proceed in the matter. He has further submitted that the court below has acted with material irregularity and has erred in law for observing that there are some variations in signatures on the passport of Suresh Mohan Thakur and in the sale deed alleged to be forged but it is not safe and proper to infer forgery only on the basis of minor variations in both the signatures. The signature on the sale deed is of 1965 and the signature on the passport is of 2010. This observation of the court is highly arbitrary and erroneous without taking the view and opinion of an expert and the same is against basic principles of law. Here it is submitted that "a prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed". While determining whether a prima facie case had been made out the relevant consideration is where on the evidence led it was possible to arrive at the conclusion in question and not whether that was only conclusion which could be arrived at on that evidence. It may that the tribunal considering the question may be its self have arrived at a different conclusion. It has, however not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record.

5. He has further submitted that in **Mohinder Singh v. Gulwant Singh (supra)** in the following words: "the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or



otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry." The use of the word 'shall' in proviso to Section 202(2) is prima facie indicative of mandatory character of the provision contained therein, but a close and critical analysis thereof along with other provisions contained in Chapter XV and Sections 226 and 227 and Section 465 would clearly show that non examination on oath of any or some of the witnesses cited by the complainant is, by itself, not sufficient to denude the concerned Magistrate of the jurisdiction to pass an order for taking cognizance and issue of process provided he is satisfied that prima facie case is made out for doing so. Here it is significant to note that the word 'all' appearing in proviso to Section 202(2) is qualified by the word 'his'. This implies that the complainant is not bound to examine all the witnesses named in the complaint or whose names are disclosed in response to the order passed by the Magistrate. In other words, only those witnesses are required to be examined whom the complainant considers material to make out a prima facie case for issue of process. The choice being of the complainant, he may choose not to examine other witnesses. Consequence of such non-examination is to be considered at the trial and not at the stage of issuing process.

6. He has further submitted that the Court below has acted with material irregularity and has erred in law by observing in the impugned order that it is open for the complainant to seek expert opinion on the point of variation of signature but the complainant chose not to seek expert opinion. This observation of the court is absolutely incorrect because the complainant has already filed a petition for seeking expert opinion which is on the record but the court for the reasons best known to him did not pass any order to that effect. Here it is submitted that in the above judgment it has also been observed that "the Magistrate is not required to enter into detailed discussions on the merits or demerits of the case, that is to say whether or not the allegations contained in the complaint, if proved, would ultimately end in conviction of the accused. He is only to see whether there exists sufficient ground for proceeding against the accused.

7. He has further submitted that the court below has acted with material irregularity and has erred in law in not considering the submission of the petitioner that the said sale deed is forged and somebody else had impersonated as Suresh Mohan Thakur because the signature on the sale deed has no resemblance with the actual specimen signature of Suresh Mohan Thakur and thus entire deed was forged. He has further submitted that the court below has acted with material irregularity and has erred in law in



not considering the contention of the petitioner that none of the 17 letters in the signature of SURESH MOHAN THAKUR in the alleged sale deed matches with the signature of Suresh Mohan Thakur in the passport of Suresh Mohan Thakur, other deeds and correspondences filed by the Petitioner. He has further submitted that the court below has acted with material irregularity and has erred in law by disbelieving the testimony of the three witnesses who have emphatically stated on oath that the signatures in the purported sale deed have not been done by Suresh Mohan Thakur.

8. He has further submitted that the court below has acted with material irregularity and has erred in law in not considering the submission of the petitioner that his father, Suresh Mohan Thakur never went to the Registry Office for execution and registration of sale deed and all the documents were executed and registered at the residential house of Suresh Mohan Thakur on commission. He has further submitted that the court below has acted with material irregularity and has erred in law in not considering the contention of the petitioner that his father never executed any sale deed written in Hindi. He has further submitted that the court below acted with material irregularity and has erred in law by ignoring the contention of the complainant that no consideration money was paid by way of any cheque or draft during or prior to the execution of the alleged forged sale deed. It all goes to show that the complainant has got very strong prima facie case to proceed in the case for issuance of summon.

9. He has further submitted that the court below acted with material irregularity and has erred in law by not considering the submission of the complainant that in all the sale deeds executed by Suresh Mohan Thakur during his lifetime and registered, at least one of the witnesses has always been a serving staff or a person known to the family of Suresh Mohan Thakur. However, in the instant case, neither the lawyer nor the witness named in the purported sale deed were even remotely known to the family of Suresh Mohan Thakur.

10. He has further submitted that the court below acted with material irregularity and has erred in law by overlooking the fact that since 1965 i.e. the alleged year of purchase the accused neither got her name mutated for 52 years i.e. till 2017 or sold the property or fenced the property or did any transaction thereof. Even the possession has not been proved by the accused. He has further submitted that the court below erred in not considering the settled principle of law that "Mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. If there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of will has to approach the appropriate civil court and get his rights crystallized and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made. Analyzing further, the Court added that right from 1997, the law is very clear.



11. He has further submitted that the court below acted with material irregularity and has erred in law by not considering that the record of sale deed brought by the representative of the Deputy Registrar did not contain the map whereas the original deed brought by the accused had the map attached. He has further submitted that court below acted with material irregularity and has erred in law by ignoring the contention of the petitioner that the forged sale deed does not contain the mother deed number. The original or photo copy or certified copy of the mother deed was not accompanied with the forged sale deed. He has further submitted that the court below acted with material irregularity and has erred in law by ignoring copy of demand drafts. received as consideration by the accused and submitted by the complainant, which shows the desperation and tearing hurry of the accused to alienate the property on the basis of forged sale deed. The Petitioner also states that any further delay in issuing summons to the accused and bringing them to book would fetch the complainant to irreparable loss. In this regard the complainant quotes the part of judgment of Hon'ble court citation??? "the expression irreparable injury. however, does not mean that there should be no possibility of repairing the injury. It only means that there the injury must be a material one, i.e. which cannot be adequately compensated by damages. An injury will be regarded as irreparable where there exists no specific or pecuniary standard for measuring damages. Where both sides are exposed to irreparable Injury pending trial, the court has to strike a just balance."

12. He has lastly submitted that to admit the revision petition, call for the lower court record, issue notice to the parties and after hearing the parties your Honour would be so kind as to set aside the impugned order and remand the case for further enquiry and proceeding against the accused persons u/s 204 of the Cr.P.C on prima facie evidence at enquiry stage. AND/OR Pass such further or other order and/or orders and direction and/or directions, as this Hon'ble Court may deem fit and proper.

13. Ld. Counsel for the state argued that there is not illegality or deficiency in the order passed by the Ld. Trial Court and he supported the order herein under challenged.

14. I have heard Ld. Counsel for the parties and perused the case record.

15. The story of the complainant in brief is that one Manorama Devi has made a false signature of Suresh Mohan Thakur on the Sale deed of land in dispute. It is further alleged that the accused persons in the complaint are using the alleged forged document for claiming title.

16. The complainant when examined on oath has reiterated that the signature appearing on the sale deed of land in dispute is not of Suresh Mohan Thakur. He further states that the present Kewala is made in Hindi, while his father i.e. Suresh Mohan Thakur wrote Kewala generally in English. The inquiry witnesses No. 01 and 02 have in substance reiterated the facts stated by complainant. It is further stated by all the witnesses that the accused persons are trying to sell off the land in an illegal



manner.

Findings

17. Now, point for consideration before this Court is whether Ld. Lower Court has erred in passing impugned order dated 12.04.2018 ?

18. After perusal case record, this court found that petitioner was examined on S.A along with other two Inquiry witnesses at the stage of inquiry. Petitioner/Complainant stated in his S.A that one Manorama Devi has made false signature of Suresh Mohan Thakur on the the sale deed of land in dispute. He further stated that the present sale deed was written in Hindi but his father Suresh Mohan Thakur generally used to write sale deed in English. He further stated that accused persons are trying to sale one and half bigha of land by executing false and forged sale deed. Inquiry witnesses no.1 and 2 supported the case of the complainant by stating that the accused had made a false signature of Suresh Mohan Thakur and prepared a forged sale deed and as result they are trying to sale the disputed land.

19. From the perusal of the record it transpires that the sale false signature was made on the sale deed executed in the year 1965. The Ld court below compares the signature of made in the sale deed with signature on the passport of Suresh Mohan Thakur and find minor variation and held that it is not safe and proper to infer forgery only on the basis of minor variation in both signatures as one signature was made in 1965 and other signature was made in the year 2010. Also it is pertinent to mention that the complainant has filed a Title Suit no. 362/2017 where the complainant had seek relief for declaring that the plaintiff are the rightful owner of the suit land and also that the entry made in survey entry was wrong illegal and vold. Further the plaintiff/complainant in his plaint has stated that the defendant had made a false and forged sale deed but the plaintiff did not seek any relief for canceling the said sale deed. Further sale deed was executed in the year 1965 and the plaintiff has filed the suit in the 2017. So it clear that the said sale deed was not declared vold by any competent court and the sale deed is still in existence.

20. Further the learned trial court below during the inquiry gave an option to the complainant for seeking an expert opinion on the point of variation of signatures but the complainant did not go for expert opinion. On this point the learned counsel for the complainant submits that he himself had given an application seeking for expert opinion but there is no such application available on the record which could support the version of the complainant. So it is clear that the complainant did not take any step for seeking expert opinion regarding variation in the signature of Suresh Mohan Thakur.

21. A civil suit between the parties is pending wherein the contention of the plaintiff is that no sale was executed whereas the contention of the respondent is that a sale deed has been executed by the vendor. A case for declaration of right and title over that suit land is also pending in the court of learned Judge. The civil court is therefore seized of the question as regards the validity of the sale deed. The matter is sub judice in the



aforesaid case in civil courts. At this juncture the respondent cannot therefore be permitted to institute a criminal prosecution on the allegation that the sale deed is a forged one. That question will have to be decided by the civil court after recording the evidence and hearing the parties in accordance with law. It would not be proper to permit the appellant to prosecute the respondent on this allegation when the validity of the sale deed is being tested before a civil court. This will not come in the way of instituting appropriate proceedings in future in case the civil court comes to the conclusion that the sale deed is a forged one."

22. In view of the foregoing discussions and considering all facts & circumstances, the revision petition is dismissed accordingly.

23. Send back the original Case Record being Complaint Case No 1975/2022, Enquiry Case No.130/16 along with a copy of this order to Ld. Court below.

Dictated and corrected by me.

Sd/-

Addl. Sessions Judge-XI,
Bhagalpur

Dated – 13.09.2024"

5. While arguing the matter, Mr. Praveen Kumar, learned counsel appearing for the petitioner highlighted the issue that learned Magistrate, while dismissing the complaint of petitioner, exceeded its limit as learned Magistrate without inviting any opinion from handwriting experts, decided the issues involved thereof in its probative terms which may prejudice petitioner in pending Title Suit No. 362/2017. It is pointed out that the impugned order categorically stated that as the signature of sale deed is of the year 1965 and passport is of the year 2010, therefore, minor variation is possible.

6. It is submitted that the aforesaid aspects and illegality was also not taken care by the revisional court while



passing the order dated 13.09.2024 in Criminal Revision No. 152/2023.

7. It is submitted that as per settled principle of law, the court is only to look whether a *prima-facie* case is made out or not, rather than to look into the probative value of the materials whether the case would culminate with acquittal or conviction. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Amannullah and Anr. Vs. State of Bihar and Ors.** reported in **(2016) 6 SCC 699**.

8. Heard learned A.P.P. for the State.

9. It would be apposite to reproduce **para 25** of **Amannullah' case (supra)**, which reads as under:

“25. A careful reading of the material placed on record reveals that the learned CJM took cognizance of the offences alleged against the accused persons after a perusal of the case diary, charge-sheet and other material placed before the court. The cognizance was taken, as a prima facie case was made out against the accused persons. It is well settled that at the stage of taking cognizance, the court should not get into the merits of the case made out by the police, in the charge-sheet filed by them, with a view to calculate the success rate of prosecution in that particular case. At this stage, the court's duty is limited to the extent of finding out whether from the material placed before it, the offence alleged therein against the accused is made out or not with a view to proceed further with the case.”

10. Considering the submissions as canvassed by



learned counsel for the petitioner and also the impugned order dated 18.10.2023, it appears *prima-facie* that learned Magistrate exceeded its jurisdiction while recording the impugned order of dismissal under section 203 of Cr.P.C., as the materials available on record appears to be appreciated in its probative terms which may prejudice legal rights of petitioner in civil suit as discussed above, which is not permissible in view of aforesaid legal provisions as available through **Amannullah' case (supra)**. Revisional court also failed to appreciate aforesaid aspects.

11. Accordingly, the order dated 13.09.2024 passed in Criminal Revision No. 152/2023 by the learned Additional Sessions Judge-XI, Bhagalpur and also the order dated 18.10.2023 as passed by learned Judicial Magistrate – 1st Class, Bhagalpur in Complaint Case No. 1975/2022, are hereby set-aside with a direction to the court of learned Judicial Magistrate - 1st Class, Bhagalpur/concerned court as to pass a fresh order *qua* Complaint Case No. 1975 of 2022 with available materials in accordance with law, as discussed aforesaid without being prejudice.



12. Accordingly, this application stands disposed of.

13. Let a copy of this judgment be sent to the
learned trial court/concerned court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.04.2025
Transmission Date	29.04.2025

