

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45763 of 2024

Arising Out of PS. Case No.-636 Year-2023 Thana- TAJPUR District- Samastipur

-
1. Mithilesh Devi W/o Ramshreshth Pandit R/o vill – Kaijiya Vishnupur, P.S. - Tajpur (OP Waini), Distt. - Samastipur
 2. Ramshreshth Pandit S/o Late Rama Pandit R/o vill - Kaijiya Vishnupur, P.S. - Tajpur (OP Waini), Distt. - Samastipur
 3. Tuntun Pandit S/o Ram Naresh Pandit R/o vill - Kaijiya Vishnupur, P.S. - Tajpur (OP Waini), Distt. - Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ravindra Kumar Mishra S/o Late Bhola Mishra R/o vill - Kaijiya Vishnupur, ward no. 14, P.S. - Tajpur (O.P. waini), Distt. - Samastipur

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Saroj Kumar, Advocate. Mr. Amit Kumar, Advocate.
For the State	:	Mr. Ajit Kumar, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 08-09-2025

Heard Mr. Saroj Kumar, learned counsel along with Mr. Amit Kumar, learned counsel appearing on behalf of the petitioners and Mr. Ajit Kumar, learned APP for the State.

2. The present application has been filed under Section 482 Cr.P.C for quashing of the F.I.R. being Tajpur P.S. (OP Waini) P.S. Case No. 636 of 2023, which was converted from Complaint No. 1043/2023 (G.R. No. 3663 of 2023), registered under Sections 323, 341, 379, 420, 466, 467, 468, 471, 120B and 469 of the Indian Penal Code and also the entire proceeding of the case pending in the Court of learned



Additional Chief Judicial Magistrate-I, Samastipur, Bihar.

3. As per the allegation made in the Complaint / F.I.R., the petitioners have allegedly dug the soil from the land of the complainant appertaining to Khata No. 581, Khesra No. 461, Area – 7 decimal putting the complainant to loss of Rs. 5 lacs. On being objected, the petitioners started abusing along with other co-accused claiming that petitioner no.1 Mithilesh Devi had purchased the land vide registered sale deed from one co-accused Suresh Das.

4. Learned counsel appearing on behalf of the petitioners informs that in Title Suit No. 82 of 1991, judgment and decree has been passed on 20.12.1995 in favour of the wife of the complainant Late Gita Devi. Father of the co-accused Suresh Das was the defendant in the said Suit. However, co-accused Suresh Das without disclosing the said fact executed the sale deed in respect of the same land appertaining to Khata No. 581, Khesra No. 461, Area – 7 decimal, which was the subject matter of the Title Suit No. 82/91. The petitioners being innocent and having not committed any forgery with the complainant, the criminal prosecution against them cannot sustain. He further submitted that the complainant has every right to get the sale deed cancelled in view of the decree passed



in his favour much earlier to the execution of the sale deed in favour of the petitioner no.1 by co-accused Suresh Das. He further submitted that for recovery of money from the petitioners, without availing the remedy of filing money suit before the competent civil court, resorting to criminal prosecution will amount to abuse of process of the court. On these grounds, learned counsel further submitted that the petitioners have been made prey on account of action of the co-accused Suresh Das who has fraudulently executed the sale deed in favour of the petitioner no.1.

5. Learned APP submitted that the matter can be resolved amicably outside the Court or the petitioner can get the sale deed cancelled by filing a suit before the learned District Court.

6. Having considered the rival submissions made on behalf of the parties, in view of the allegation made in the complaint / F.I.R. against the petitioners and the information contained in the complaint petition, as well as, in the application filed before this Court under Section 482 Cr.P.C. and having analyzed the provisions of Sections 323, 341, 379, 420, 466, 467, 468, 4741, 120B and 469 of the Indian Penal Code, I find that a person is said to do a thing fraudulently if he does that



thing with intent to defraud but not otherwise. The very intent / *mens rea* is one of the ingredients for causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly to defraud or do something fraudulently is not by itself made an offence under Indian penal Code, but various act when done fraudulently are made offence.

7. In the present case, I find that the petitioners have been deceived by co-accused Suresh Das who fraudulently sold the piece of land which was the subject matter of Title Suit No. 82/91 in which decree was in faovur of the complainant. The petitioners have not given any information, as to whether, the father of the co-accused Suresh Das had preferred any appeal against the judgment and decree passed in the said Title Suit. However, it is clear on perusal of the sale deed no. 5319 dated 11.04.2023 that there is no reference of Title Suit or any reference of the land in question to be subject matter of any suit before any competent civil court or any appeal having been filed against the judgment.

8. In this regard, the Apex Court while dealing with the content of complaint in the case of *S. N. Vijayalakshmi & Ors. Vs. The State of Karnataka and Anr.*, reported in (2025) *SCC Online SC 1575*, has observed in Paragraph Nos. 42 and



43, which are reproduced hereinafter:

“42. Coming to the second question i.e., whether civil and criminal proceedings both can be maintained on the very same set of allegations *qua* the same person(s), the answer *stricto sensu*, is that there is no bar to simultaneous civil and criminal proceedings. If the element of criminality is there, a civil case can co-exist with a criminal case on the same facts. The fact that a civil remedy has already been availed of by a complainant, *ipso facto*, is not sufficient ground to quash an FIR, as pointed out, *inter alia*, in *P Swaroopa Rani v. M Hari Narayana*, (2008) 5 SCC 765 and *Syed Aksari Hadi Ali Augustine Imam v. State (Delhi Admn.)*, (2009) 5 SCC 528. The obvious caveat being that the allegations, even if having a civil flavour to them, must *prima facie* disclose an overwhelming element of criminality. In the absence of the element of criminality, if both civil and criminal cases are allowed to continue, it will definitely amount to abuse of the process of the Court, which the Courts have always tried to prevent by putting a stop to any such criminal proceeding, where civil proceedings have already been instituted with regard to the same issue, and the element of criminality is absent. If such element is absent, the prosecution in question would have to be quashed. In this connection, *Paramjeet Batra v. State of Uttarakhand*, (2013) 11 SCC 673 can be referred to:

‘12. ... Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.’

(emphasis supplied)

43. In *Usha Chakraborty v. State of West Bengal*, (2023) 15 SCC 135, while quashing the FIR therein and further proceedings based thereon, it was observed ‘...the factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature.’”

9. In view of the discussions made hereinabove and the law laid down by the Apex Court, I find that it cannot be said that proceeding has been instituted with regard to same issue rather the action can be said to have criminal texture, as



such, the entire criminal proceeding in relation to Complaint Case No. 1043 of 2023 which has been converted into F.I.R. being Tajpur P.S. (OP Waini) P.S. Case No. 636 of 2023 pending in the Court of learned Additional Chief Judicial Magistrate-I, Samastipur cannot be quashed, so far as the petitioners are concerned. The parties can go for compromise outside the court or seek cancellation of sale deed by filing civil suit before competent civil court.

10. The present quashing application stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	10.09.2025
Transmission Date	N.A.

