

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55327 of 2016

Arising Out of PS. Case No.-3288 Year-2012 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

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Amit Sinha @ Amit Kumar Sinha S/o Late Jagdishwer Prasad Sinha, Resident of Devi Bhawan, Near Area Kadam Kuan, P.S.- Kadam Kuan, District- Patna at Present posted as District Sub Register, Gopalganj.

... .. Petitioner

Versus

1. The State Of Bihar
2. Hari Mohan Pandey, S/o Late Mahendra Pandey, Resident of Turkaha Tola, P.S.- Gopalganj, Distt.- Gopalganj.

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Mukeshwar Dayal, Advocate
Mr. Vikas Mohan, Advocate
For the State : Mr. Arbind Kumar Pandey, APP
For the O.P. No.2: Mr. Vishwajeet Kumar Mishra, Advocate
Mr. Aakash Chaudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 10-01-2025

The present petition, under Section 482 Cr.PC, has been preferred by the petitioner for quashing the impugned order dated 03.08.2016 passed by learned Additional District & Sessions Judge-III, Gopalganj in Cr. Revision No. 1034 of 2013 and the order dated 11.07.2013 passed by learned Judicial Magistrate Ist Class in Criminal Complaint Case No. 3288 of 2012, whereby learned Sessions Court has dismissed the revision petition upholding the order dated 11.07.2013, whereby Id. Judicial Magistrate has directed issuance of summons against the accused including the petitioner finding *prima facie* case under Sections 417 and 465 of the Indian Penal Code.



Prosecution Case

2. The criminal proceeding was initiated by the Criminal Complaint bearing No. 3288 of 2012 filed by one Hari Mohan Pandey, who is O.P. No.2 herein alleging that the land in question belongs to him on account of gift deed executed by Ramchandra Pandey and he is in possession of the property. However, co-accused Rameshwar Pandey, claiming to be adopted son of Ramchandra Pandey, has executed sale deed of the land to co-accused Anand Mishra, who is also part of conspiracy of the illegal transaction and accused Amit Kumar Sinha, who is petitioner herein was Sub-Registrar, Gopalganj, where the sale deed was executed by the accused Rameshwar Pandey in favour of the co-accused Ramashish Pandey. The alleged date of occurrence have been mentioned in the complaint as 26.09.2012, 06.09.2012 and 30.08.2012.

Factual background

3. During enquiry, the complainant was examined under Section 200 of Cr.PC and thereafter, learned Judicial Magistrate directed issuance of summons against the accused including the petitioner finding prima facie case under Sections 417 and 465 of the Indian Penal Code. Petitioner subsequently preferred criminal revision against the summoning order dated



11.07.2013 bearing Criminal Revision No. 1034 of 2013, which was rejected by learned Addl. District & Sessions Judge-III, Gopalganj by the impugned order dated 03.08.2016.

4. I heard learned counsel for the Petitioner, learned APP for the State and learned counsel for the Opposite Party No.2.

Submissions on behalf of the Petitioner

5. Learned counsel for the Petitioner submits that the Petitioner is a government official, posted as District Sub-Registrar, Gopalganj and he has been implicated only on account of his being District Sub-Registrar at Gopalganj. There is no any other specific allegation against the Petitioner in the complaint. He further submits that no government official can be prosecuted unless there is sanction for the prosecution granted by Competent Authority under Section 197 Cr.PC. But in the present case, no sanction has been obtained, whereas the alleged registration of sale-deed by the District Sub-Registrar, Gopalganj has been done in discharge of his official duty and in such situation grant of sanction is *sine qua non* for institution and continuation of the prosecution of the District Sub-Registrar, Gopalganj.

6. He further submits that even as per the alleged facts



and circumstances, no offence is made out. In fact, it is a dispute of civil nature in regard to right and title to the property left behind by deceased Ramchandra Pandey and the accused Rameshwar Pandey, who has executed sale deed as son of Ramchandra Pandey. However, as per the complainant, Ramchandra Pandey died issueless and he had executed gift deed in favour of the complainant and hence, Rameshwar Pandey has no right and title to the property and therefore, he has no right to sell the same. As per the sale deed, the Accused Rameshwar Pandey is 18 years old and he is son of Ramchandra Pandey though, the complainant is denying that he is adopted son of Ramchandra Pandey. As such, alleged facts and circumstances, constitute a dispute of civil nature and the same could be adjudicated only by Civil Court, but no offence at all is made out as per the alleged facts and circumstances. He further submits that even if it is assumed that the land sold by Rameshwar Pandey belongs to the complainant, there is no loss to the complainant because it is a settled principle of law that no one can transfer better title than his own and as such, there is no loss to the complainant. Moreover, sale deed is genuine though the claim of the seller/Accused Rameshwar Pandey that he is son of deceased Ramchandra Pandey, is contested by the



complainant saying that Ramchandra Pandey died issueless and Accused Rameshwar Pandey is not adopted son of deceased Ramchandra Pandey.

7. As such, as per Ld. Counsel for the Petitioner, the alleged facts and circumstances constitute, at most, a dispute of purely civil nature. Hence, the impugned order and the whole complaint is liable to be quashed.

Submissions on behalf of State and O.P. No.2

8. However, Ld. APP for the State and Ld. Counsel for the Opposite Party No. 2 submit that there is no illegality or infirmity in the impugned order and hence, the present petition is liable to be dismissed.

9. He also refers to and relies upon the judgment of this Court namely, **Amit Sinha Vs. The State of Bihar and Anr.**, as reported in 2024 SCC OnLine Pat 6330 and AIR ONLINE 2024 PAT 468.

Scope and ambit of Section 482 Cr.PC

10. Before I proceed to consider the rival submissions of the parties, it would be pertinent to see the scope and ambit of Section 482 of the Cr.PC. Here it would be profitable to refer to **Amit Sinha Case** (Supra), wherein this Court, after referring to relevant statutory provisions and binding judicial precedents,



has held that for taking cognizance of any offence and issuing summons to any accused in a complaint case, there must be a *prima facie* offence made out on the basis of the allegation made in the complaint and the statements made by the complainant and his witnesses during inquiry under Section 202 Cr.PC. However, such allegation or the statements should not be patently absurd and inherently improbable to a prudent mind. Moreover, the allegation/statements made in the complaint and during inquiry under Section 200 Cr.PC should be examined as a whole, but the veracity of such statements could not be examined at this stage. The statements have to be taken at their face value to see whether *prima facie* case is made out or not. Moreover, if the given set of facts makes only a civil dispute, the complaint or the cognizance/summoning order should be quashed to prevent abuse of the process of court and promote ends of justice.

Whether a prima facie case is made out against the Petitioner.

11. Now, the question for consideration is, whether the allegation made in the complaint or the statement of the witnesses as recorded in support of the same taken at their face value make out any case against the accused.

12. As per the allegation in the complaint and the



statements of the complainant and his witnesses during inquiry under Section 200 Cr.PC, Ld. Magistrate, has taken cognizance of offences punishable Sections 417 and 465 of the Indian Penal Code vide the impugned order dated 20.03.2013.

13. Section 417 of the Indian Penal Code provides for punishment for committing cheating. Section 415 of the Indian Penal Code defines cheating. In **Ram Das Vs. State of U.P., 1970 (2) SCC 740, Hon'ble Supreme Court** has analysed the ingredients of the offence of cheating as under:

“(i) there should be fraudulent or dishonest inducement of a person by deceiving him;
(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or
(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
(iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

14. Hon'ble Supreme Court had occasion to consider the similar facts and circumstances in **Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr., [(2009) 8 SCC 751]** which had traveled from the district of Madhubani, Bihar. In this case also, the complainant had made allegation that his land was sold by the accused without having any title to the land. The co-accused were witnesses, scribe and vendor in regard to the sale-



deed. Here, explaining the ingredients of cheating, Hon'ble Supreme Court held as follows:

“18.....

(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 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.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second



accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.”

(Emphasis supplied)

15. As such, representation by the Accused to the deceived doing fraudulent or dishonest inducement is *sine qua non* for making out offence under Section 415 of the Indian Penal Code. But in the case on hand, I find that there is no allegation of the Complainant that any Accused has made any representation to him to part with any property. As such, for want of any representation, question of any fraudulent or dishonest inducement of the Complainant does not arise.

16. Moreover, the complainant has not parted with any property to the Accused persons, nor has he executed the sale-deed. As such, his title, if any, to the land in question, is still safe, because his title cannot get conveyed to purchaser if the conveyance deed/sale-deed has been executed by someone else, who is not possessed of the title to the land in question. A purchaser can get the title conveyed only if the seller has title to the property. It is a settled principle of law that no one can transfer better title than his own, as **Hon’ble Supreme Court in Eureka Builders Vs. Gulabchand, (2018) 8 SCC 67**, has clearly held as follows:



“35. It is a settled principle of law that a person can only transfer to other person a right, title or interest in any tangible property which he is possessed of to transfer it for consideration or otherwise. In other words, whatever interest a person is possessed of in any tangible property, he can transfer only that interest to the other person and no other interest, which he himself does not possess in the tangible property.

36. So, once it is proved that on the date of transfer of any tangible property, the seller of the property did not have any subsisting right, title or interest over it, then a buyer of such property would not get any right, title and interest in the property purchased by him for consideration or otherwise. Such transfer would be an illegal and void transfers.”

(Emphasis supplied)

17. Here, it would be also pertinent to refer to **JIT Vinayak Arolkar Vs. State of Goa & Ors. (Criminal Appeal No. 393 of 2024)** as decided by **Hon’ble Apex Court** just four days back on 06.01.2025. In that case, undivided share in landed property was sold by the accused and the FIR was lodged by the co-sharer. In this case, Hon’ble Supreme Court quashed the FIR holding as follows, relying upon **Mohammed Ibrahim Case** (Supra):

“12.1 In this case, it is impossible to understand how the appellant deceived the 4th respondent and how the act of execution of sale deeds by the appellant caused or was likely to cause damage or harm to the 4th respondent in body, mind, reputation or property. The appellant has not purported to execute the sale deeds on behalf of the 4th respondent. He has not purported to transfer the rights of the 4th respondent. There is no allegation that the appellant deceived the 4th respondent to transfer or deliver the subject property.”



(Emphasis supplied)

18. Hence, there is no question of application of Section 417 of the Indian Penal Code to the alleged facts and circumstances of the case against the Accused Persons including the Petitioner.

19. As for application of Section 465 IPC, this Section provides for punishment for forgery. Forgery has been defined in Section 463 of the Indian Penal Code which provides as follows:

“463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, 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.”

20. The basic ingredients of forgery as explained by Hon’ble Supreme Court in **Sushil Suri V. Central Bureau of Investigation**, [AIR 2011 SC 1713] are as follows:

“(1) The making of a false document or part of it and (2) such making should be with such intention as is specified in the section, viz., (a) to cause damage or infringe to (i) the public, or (ii) any person; or (b) to support any claim or title; or (c) to cause any person to part with property, or (d) to cause any person to enter into an express or implied contract; or (e) to commit fraud or that fraud may be committed.”

21. Section 464 of the Indian Penal Code defines making of false documents. It reads as follows:



“464. Making a false document. —

A person is said to make a false document or false electronic record—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, signed, 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 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.

Illustrations

22. Here, again it would be profitable to refer to

Mohammed Ibrahim Case (Supra), wherein Hon’ble Supreme

Court clearly held as follows:

“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



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.”

(Emphasis supplied)

23. Hon’ble Supreme Court in Randheer Singh Vs.

State of U.P., [(2021) 14 SCC 626], also held as follows:

“24. A fraudulent, fabricated or forged deed could mean a deed which was not actually executed, but a deed which had fraudulently been manufactured by forging the signature of the ostensible executants. It is one thing to say that Bela Rani fraudulently executed a power of attorney authorising the sale of property knowing that she had no title to convey the property. It is another thing to say that the power of attorney itself was a forged, fraudulent, fabricated or manufactured one, meaning thereby that it had never been executed by Bela Rani. Her signature had been forged. It is impossible to fathom how the investigating authorities could even have been prima facie satisfied that the deed had been forged or fabricated or was fraudulent without even examining the apparent executant Bela Rani, who has not even been cited as a witness.

(Emphasis supplied)

24. In the given case on hand also, there is no allegation of impersonation by any accused person while executing the sale-deed in question. No one has forged signature of the complainant or anybody else. Accused, Rameshwar Pandey has executed the sale-deed in regard to the land in question in favour of his co-Accused, claiming to be son of Ramchandra Pandey who has already died. Hence, the sale-deed in question is not a forged document. It is genuine one. Whether the sale-deed in question conveys title to the transferee



is a legal question to be decided by competent Civil Court. But Sections 465 of the Indian Penal Code does not get attracted against the Accused Persons including the Petitioner.

25. Hence, in my view, the complaint does not disclose any offence, much less any offence under Sections 417 and 465 of the Indian Penal Code. The alleged facts and circumstances of the present case, at most, constitute a dispute of purely civil nature between the parties for which remedy lies before a civil court by filing appropriate civil suit.

Whether the Petitioner is entitled to protection u/s 197 Cr.PC.

26. I also find that the impugned order against the petitioner is not sustainable in view of the provisions of Section 197 Cr.PC also, which provides protection to Public Servants against prosecution for any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, debarring any court to take cognizance of such offence, except with the previous sanction of the appropriate government. In the case on hand, undisputedly no such sanction has been granted against the petitioner and as per the allegation, the petitioner was Sub-Registrar, Gopalganj at the time of registration of the sale deed in question. Needless to say that registration of sale deed is part of official duty of any



Sub Registrar of any district. Hence, in the case on hand, sanction was required before taking cognizance of the alleged offence and issuing summons against the Petitioner.

27. The object and purpose underlying Section 197 Cr.PC is, as held by this Court in **Kumar Arun Prakash case** (Supra), after referring to statutory provision and case laws, to afford protection to public servants against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. The larger interest of efficiency of State administration demands that public servants should be free to perform their official duty fearlessly and undeterred by apprehension of their possible prosecution at the instance of private parties to whom annoyance or injury may have been caused by their legitimate acts done in the discharge of their official duty. This Section is designed to facilitate effective and unhampered performance of their official duty by public servants, by providing for scrutiny into the allegations of commission of offence by them by their superior authorities and prior sanction for their prosecution as a condition precedent to the cognizance of the cases against them by the Courts.

28. As per judicial precedents, it is settled law that if



the alleged offence has been committed by the public servant in discharge of his official duty, the protection as provided under Section 197 Cr.PC comes into play and the public servant concerned cannot be prosecuted unless there is sanction granted by the competent authority for his prosecution. However, the alleged act/offence should not be totally unconnected with the official duty. There must be reasonable connection between the official duty of the public servant and the alleged act/offence. Official duty implies the act or omission done by the public servant in course of his service and in discharge of his duty. In other words, Section 197 Cr.PC does not apply to acts done purely in a private capacity by the public servant. Reliance is placed on the following authorities:

- (i) **Pukhraj Vs. State of Rajasthan**, (1973) 2 SCC 701
- (ii) **State of Orissa Vs. Ganesh Chandra Jew**, (2004) 8 SCC 40
- (iii) **P. Arulswami Vs. State of Madras**, AIR 1967 SC 776
- (iv) **B. Saha Vs. M.S. Kochar**, (1979) 4 SCC 177
- (v) **Om Prakash Vs. State of Jharkhand**, (2012) 12 SCC 72
- (vi) **D. Devaraja Vs. Owais Sabeer Hussain**, (2020) 7 SCC 695

29. In Shreekantiah Ramayya Munipalli Vs. State of Bombay, (1954) 2 SCC 992, Hon'ble Supreme Court has held if Section 197 Cr.PC is construed too narrowly, it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be



performed in the discharge of official duty as well as in dereliction of it.

30. As such, I find that the prosecution of the Petitioner on the basis of the complaint filed against him by the Complainant cannot continue for want of sanction as provided under Section 197 Cr.PC because in **State of Haryana Vs. Bhajan Lal [1992 Suppl (1) SCC 335]**, Hon'ble Supreme Court has clearly held, amongst other things, that in case of any bar of institution or continuation of prosecution under any provisions of law, the Court can invoke inherent power under Section 482 Cr.PC to prevent the abuse of the process of the Court and secure the ends of justice.

Conclusion/Finding of this Court

31. Hence, the impugned order is not sustainable in the eye of law and it is liable to be quashed and set aside under Section 482 Cr.PC to prevent the abuse of the process of Court and meet the ends of justice.

32. Accordingly the present petition is allowed, quashing and setting aside the impugned order dated 03.08.2016 passed by learned Additional District & Sessions Judge-III, Gopalganj in Cr. Revision No. 1034 of 2013 and the order dated 11.07.2013 passed by learned Judicial Magistrate Ist Class,



Gopalganj in Criminal Complaint Case No. 3288 of 2012 with
reference to the Petitioner.

(Jitendra Kumar, J.)

Ravishankar/
Chandan-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.01.2025.
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