

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13527 of 2016

Arising Out of PS. Case No.-150 Year-2013 Thana- UDAKISHUNGANJ District-
Madhepura

=====

Parmanand Sharma S/o Late Dev Narayan Sharma, Resident of Village-
Bihpur Milki, Police Station- Bihpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sadanand Sharma, S/o Late Dev Narayan Sharma, resident of Village-
Bihpur Milki, Police Station- Bihpur, District- Bhagalpur.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh, Advocate

For the Opposite Party/s : Mr. Ajit Kumar, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 27-11-2025

Heard learned counsel appearing on behalf of the
petitioner and learned A.P.P. for the State.

2. The petitioner has preferred application under
Section 482 Cr.P.C. for quashing of the order taking cognizance
dated 17.06.2016 passed by the learned Sub-Divisional Judicial
Magistrate, Udakishunganj, Madhepura in Udakishunganj P.S.
Case No. 150 of 2013 by which learned S.D.J.M., has taken
cognizance of offence against the petitioners under Sections
420, 467, 468, 120 (B) and 34 of the Indian Penal Code.

3. Prosecution story in brief is that the father and
brother (petitioner) of the complainant/informant had sold a
piece of land appertaining to Old Khata No. 1046, New Khata



No. 218, Old Khesra No. 5340, New Khesra No. 6567 measuring total area 195 decimal, to one Maheshwar Paswan, including the share of complainant/informant for which, the complainant had filed a complaint before the learned Chief Judicial Magistrate, Madhepura, who found that the case should be investigated by the police and the same was converted into FIR bearing Udakishunganj P.S. Case No. 150 of 2013 as per the provision of Section 156 (3) Cr.P.C.

4. Learned counsel appearing on behalf of the petitioner submitted that petitioner had executed sale deed in respect of a share of land appertaining to Old Khata No. 1046, New Khata No. 218, Old Khesra No. 5340, New Khesra No. 6567 measuring total area 195 decimal to one Maheshwar Paswan after receiving consideration amount of Rs. 6,95,000/-. The vendee Maheshwar Paswan got the land mutated in his favour and then due to enmity, the complainant/informant filed a complaint before the learned Chief Judicial Magistrate, Madhepura, who found that the case should be investigated by the police and the same was converted into FIR bearing Udakishunganj P.S. Case No. 150 of 2013 as per the provision of Section 156 (3) Cr.P.C. He further submitted that the petitioner had sold the aforesaid piece of land on 13.03.2013 by



executing sale-deed no. 1651, while subsequent to the same, the complainant had sold the same piece of land on 27.05.2013 by executing sale-deed no. 3348. Learned S.D.J.M. has taken cognizance under Sections 420, 467, 468, 120(B) and 34 of the Indian Penal Code without considering any material and evidences available on record and if the petitioner is allowed to face the criminal prosecution, the same will be abuse of process of law. Learned counsel, in support of his argument, has relied upon the law laid down by the Apex Court in the case of ***S.N. Vijayalakshmi & Ors. Vs. The State of Karnataka and Anr.*** reported in ***(2025) SCC Online SC 1575***, wherein the Apex Court has deprecated filing of criminal case instead of taking resort to the civil remedies, if the dispute is primarily civil in nature and has also observed that the Court should not allow such proceeding to continue.

5. Learned counsel further submitted that present is the case, in which, cloaks of criminal proceeding the complainant has sought to file the present case, which is not only vexatious but against the law settled by the Apex Court. He further submitted that opposite party no. 2 was issued notice vide order dated 22.04.2025 but the O.P. No. 2 has not been represented on 24.11.2025 and today in spite of the fact that



service report shows that the same was personally received by the O.P. No. 2(complainant), which shows that the O.P. No. 2 is not willing to pursue the present criminal case. On these grounds, learned counsel submitted that the order taking cognizance dated 17.06.2016 including the entire proceeding is fit to be quashed and set aside.

6. *Per contra*, Mr. Ajit Kumar, learned A.P.P. appearing on behalf of the State submitted that learned S.D.J.M. after considering the material and records, as well as, charge-sheet submitted, has taken cognizance against the petitioner under Sections 420, 467, 468, 120 (B) and 34 of the Indian Penal Code and any interference at this stage will amount to curtail the jurisdiction of the Court and the same will not be in the interest of justice. He further submitted that though the dispute relates to a piece of land, the petitioner instead of showing any desire to settle the dispute with his family members, resorted to file the present quashing application.

7. Heard the parties.

8. Having considered the rival submissions made on behalf of the parties, as well as, I have also perused the allegations made in the complaint, on which basis, learned S.D.J.M., in exercise of jurisdiction under Section 156 (3)



Cr.P.C., had directed for police investigation. The record reveals that the dispute arises in respect of a piece of land bearing Old Khata No. 1046, New Khata No. 218, Old Khesra No. 5340, New Khesra No. 6567 measuring total area 195 decimal, which the petitioner had sold to one Maheshwar Paswan by executing sale-deed no. 1651 dated 11.03.2013 while subsequent to the same, the complainant had sold the same piece of land on 27.05.2013 by executing sale-deed no. 3348. In spite of the above fact that the petitioner had sold the land prior to the complainant, the Investigating Officer submitted charge-sheet under Sections 420, 467, 468, 120(B) and 34 of the Indian Penal Code. It appears that without looking into the material evidences and without application of mind, learned S.D.J.M. took cognizance against the petitioner under Sections 420, 467, 468, 120 (B) and 34 of the Indian Penal Code. At the same time, he failed to take into consideration that the proper remedy in such circumstances is filing of suit for cancellation of the sale-deed by the respective parties if either of the parties i.e. petitioner or the complainant or any of the family member have sold any piece of land, which don't belong to their share.

9. In this regard, I find it apt to refer the observation made by the Apex Court in Para-12 in case of ***Paramjeet Batra***



v. State of Uttarakhand, (2013) 11 SCC 673, which is reproduced hereinafter::

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. 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."

10. In case of *Usha Chakraborty v. State of West Bengal, (2023) 15 SCC 135*, while quashing the FIR therein and further proceedings based thereon, the Apex Court observed as under: -

‘...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.’

11. The Apex Court has reiterated the aforesaid proposition in recent judgment of *S.N. Vijayalakshmi & Ors. Vs. The State of Karnataka and Anr.* reported in *(2025) SCC Online SC 1575*.

12. Dispute being purely civil in nature, instead of availing civil remedy, resorting to lodge a criminal case has



been deprecated by the Apex Court, which will lead to unnecessary criminal prosecution, and in spite of the fact that the complainant has himself received notice but he has chosen not to proceed with the same as apparently he is absent on two consecutive dates, it appears that complainant is not willing to pursue the present criminal case, the order taking cognizance dated 17.06.2016 along with the entire proceeding, are hereby quashed and set aside.

13. Accordingly, the present application stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	01.12.2025
Transmission Date	01.12.2025

