

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66024 of 2018

Arising Out of PS. Case No.-1605 Year-1999 Thana- PATNA COMPLAINT CASE District-
Patna

-
-
1. Upendra Singh
 2. Birendra Singh. Both are Sons of Late Bindeshwar Singh, Resident of Mohalla- Sheikhpura, P.S.- Lal Bahadur Shastri Nagar Now Hawaii Adda, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Smt. Shanti Devi, W/o Sri Ramjeet Singh, Resident of Mohalla- Sheikhpura, P.S.- Shastri Nagar, Dist- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No.2	:	Mr. Rajiv Ranjan Kr. Pandey, Advocate
		Mr. Mukesh Kumar, Advocate
		Mr. Kritya Nand Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

- 5 29-06-2026 1. Heard learned counsel for the petitioners as well as learned counsel for the O.P. No.2 and learned APP for the State.
2. The present application has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') for quashing the order dated 15.01.2001 passed by the learned Judicial Magistrate, 1st Class, Patna (hereinafter referred to as 'Magistrate') in connection with Complaint Case No.1605 (C) of 1999, wherein the learned Magistrate took cognizance of the offences punishable under Sections 419, 467, 468, 471 and 120B of the Indian Penal Code,



1860 against the present petitioners and other accused persons.

3. The prosecution of the present petitioners arises out of Complaint Case No.1605 (C) of 1999 instituted by O.P. No.2, alleging commission of offences under Sections 419, 467, 468, 471 and 120B of the Indian Penal Code. The complaint pertains to an alleged fraudulent deed of gift dated 17.10.1984 in favour of the petitioners, which, according to the complainant (O.P. No.2), was brought into existence by impersonation and forgery with an intention to defeat the effect of two earlier registered deeds of gift dated 16.07.1984 allegedly executed by Smt. Lachhiya Devi of her *Naihari* properties in favour of the complainant (O.P. No.2) and her husband. It has been alleged that the accused persons entered into a criminal conspiracy and fabricated the subsequent deed of gift by setting up an impostor in place of the executant, thereby causing wrongful loss to the complainant (O.P. No.2).

4. Upon consideration of the complaint petition, the solemn affirmation of the complainant and the materials collected during the inquiry, the learned Magistrate, *vide* the impugned order dated 15.01.2001, found a *prima facie* case to be made out and accordingly took cognizance of the offences punishable under Sections 419, 467, 468, 471 and 120B of the



Indian Penal Code against the present petitioners and the other accused persons. Being aggrieved by the aforesaid impugned order of cognizance dated 15.01.2001 and the consequential criminal prosecution arising therefrom, the present application has been preferred invoking the inherent jurisdiction of this Court for quashing of the said impugned order as well as the entire criminal proceeding.

5. Learned counsel for the petitioners submits that the impugned order suffers from patent illegality inasmuch as the present complaint is founded on the very same set of allegations and cause of action which had earlier been made the subject matter of Complaint Case No.157 (C) of 1985 instituted by Smt. Lachhiya Devi herself who was mother-in-law of the complainant (O.P. No.2). It is submitted that the accused persons therein were discharged by the competent Court *vide* order dated 15.02.1997 and, despite full knowledge of the earlier proceedings, the O.P. No.2 (complainant) instituted the present complaint after an inordinate delay on substantially identical allegations. Learned counsel further submits that the dispute, if any, essentially relates to the validity of rival deeds of gift and is predominantly civil in nature, for which no civil action was initiated by the complainant (O.P. No.2) within the



prescribed period of limitation.

6. Learned counsel for the petitioner further submits that the impugned order of cognizance cannot be sustained also for the reason that one of the co-accused, namely, Ramdeo Singh, against whom cognizance had been taken by the very same impugned order dated 15.01.2001 arising out of the same Complaint Case No.1605 (C) of 1999, had approached this Court in Cr. Misc. No. 4360 of 2002 and a Coordinate Bench, after considering the merits of the matter, quashed the entire criminal proceeding so far as he was concerned. Learned counsel, therefore, submits that the case of the present petitioners stands on an identical footing and they are entitled to the same relief on the principle of parity.

7. Learned counsel for the O.P. No.2, while supporting the impugned order, submits that the complaint petition and the materials brought on record disclose the commission of cognizable offences and the learned Magistrate has rightly taken cognizance. It is submitted that the present petition does not warrant interference in exercise of the inherent jurisdiction of this Court.

8. Learned APP for the State fairly submits that the allegations in the present case arise out of the same complaint



case and the same order of cognizance which was the subject matter of consideration before the Coordinate Bench of this Court. He submits that appropriate order may be passed in view of the earlier order passed by the Co-ordinate Bench of this Court, as stated above.

9. I have considered the submissions advanced on behalf of the parties and have carefully perused the materials available on record including the judgment and order dated 25.08.2010 passed by the Coordinate Bench of this Court in Cr. Misc. No.4360 of 2002, arising out of the same Complaint Case No.1605 (C) of 1999.

10. It is the specific case of the petitioners that the very same transaction had earlier been made the subject matter of Complaint Case No.157 (C) of 1985 instituted by Smt. Lachhiya Devi herself against substantially the same set of accused persons, wherein the learned Court concerned, *vide* order dated 15.02.1997, discharged the accused persons. According to the petitioners, despite the said discharge and despite the complainant (O.P. No.2) having full knowledge of the earlier proceedings, the present complaint came to be instituted in the year 1999 and cognizance of the offence was taken on 15.01.2021 on substantially identical allegations



arising out of the same cause of action. The trial in this case is pending for appearance of other accused persons.

11. It is pertinent to note that the Coordinate Bench of this Court, upon an examination of the materials on record, noticed that the allegations forming the basis of the present complaint had earlier been the subject matter of Complaint Case No.157 (C) of 1985 instituted by Smt. Lachhiya Devi herself, which culminated in discharge of the accused persons on 15.02.1997. The Court further took note of the fact that the present complainant was fully aware of the earlier proceedings and yet instituted a fresh complaint after a considerable lapse of time on substantially identical allegations. Taking into consideration the attendant facts and circumstances, the Coordinate Bench held that the continuance of the criminal prosecution would amount to an abuse of the process of the Court and, accordingly, quashed the order of cognizance as well as the criminal proceeding against the petitioner therein.

12. In the order dated 25.08.2010 rendered by the Coordinate Bench of this Court in Cr. Misc. No.4360 of 2002 arising out of the same Complaint Case No.1605 (C) of 1999, it was held *inter alia*, as under:-

“It is not in dispute that in the case, the alleged occurrence had taken place



in the year 1984 and it is also not in dispute that earlier complaint petition for the same allegation against the petitioner was rejected by the learned Magistrate. The Court considers that there is no reason to allow continuance of further proceeding in the present complaint case.

Considering the facts and circumstances as mentioned above, the Court is of opinion that allowing prosecution of petitioner on such allegation that too after such a long period will amount to allowing abuse of process of the Court. With a view to prevent the abuse of process of the Court, it is necessary to exercise inherent jurisdiction in favour of the petitioner and as such, order of cognizance dated 15.01.2001 passed by Sri. P.N. Sharma, Judicial Magistrate, 1st Class, Patna in Complaint Case No.1605 (C) of 1999 is hereby set aside and the petition stands allowed.”

13. Admittedly, the present prosecution emanates from the very same complaint case, the impugned order of cognizance is the very same order dated 15.01.2001, and the allegations arise out of the identical transaction.

14. In the aforesaid circumstances, this Court is of the considered opinion that permitting the criminal prosecution against the present petitioners to continue would be wholly unjustified and would amount to an abuse of the process of the Court.

15. Resultantly, the order dated 15.01.2001 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint



Case No.1605 (C) of 1999, so far as it relates to the present petitioners, is set aside and the entire criminal proceeding arising therefrom *qua* the petitioners herein, is quashed.

16. The present Criminal Miscellaneous Application is, accordingly, allowed.

17. Let a copy of this order be transmitted to the Court concerned forthwith for needful and compliance.

(Sunil Dutta Mishra, J)

Ritik/-

U		T	
---	--	---	--

