
(2007) 02 PAT CK 0153

In the Patna High Court

Case No : Criminal Miscellaneous No. 3541 of 1998

Baldau Singh

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 05-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 420, 423, 467, 468, 472

Citation : (2007) 2 PLJR 235

Hon'ble Judges : Madhavendra Saran, J

Bench : Single Bench

Advocate : Tribhuwan Narayan, for the Appellant; Prabhakar Singh, for the Respondent

Final Decision : Allowed

Judgement

Madhavendra Saran, J.—Learned counsel for the petitioner is permitted to make necessary correction in paragraph 3 of the supplementary affidavit by adding corresponding PS case. This application u/s 482 of the Code of Criminal Procedure (in short as Code) has been filed for quashing the entire proceeding of complaint case no. 458 (6) of 1997 corresponding to Bhabhua PS case no. 1/98 registered for the offences punishable u/ss. 420, 467, 468, 473 and 423 of the IPC presently pending in the court of CJM, Bhabhua. It is said that on 11.9.97 OP No. 2 Bijay Bahadur Singh filed a petition of complaint in the court of CJM, Bhabhua for the offences punishable u/ss 420, 467, 468, 472 and 423 of the IPC and the same was registered as complaint case no. 458(C) of 1997. It further appears that copy of the complaint petition was sent to Officer Incharge of Bhabhua Police Station u/s 156 (3) of the Code for registration and investigation on the basis of which the police registered Bhabhua PS case no. 1/98 and started investigation.

2. The case of prosecution, in short, is that Mosmat Dukhna Kuer wife of late Jhuri Singh, died on 10.6.95. She was aunt of complainant and Fua (Sister of

father) of accused petitioner Baldau Singh. Most. Dukhna Kuer was living in the house of the complainant and complainant's uncle was maintaining her. The husband of Dukhna Kuer died before 1937 without any issue. After death Dukhna Kuer was cremated at Manikarnika Ghat, Varanasi by the complainant along with the prosecution witnesses. The complainant had given Mukhagani and completed all the rites in this house. It is alleged that near about 1966 Most. Dukhna Kuer went for pilgrimage and thereafter she became traceless for 8 to 9 years and during the said period Baldau Singh got registered a forged deed of gift with respect to 1/3rd share of the property. The complainant/OP no.2 has filed title suit no. 329/96 for setting aside the deed of gift aforementioned against the accused. In the said title suit on 11.7.97 accused petitioner filed a list of documents along with papers and from perusal of the same it became obvious that the accused has filed death certificate of Most. Dukhna Kuer in which his name has been recorded in the column of the person giving Mukhagani and signature of Baldau Singh is there which is against the factual position. On 10.9.97 the complainant obtained certified copy of death certificate from which it transpires that name of complainant is there. Thus, it is said that the accused petitioner obtained forged death certificate of Dukhna Kuer with a view to grab the property.

3. It has been contended on behalf of the petitioner that after death of Dukhna Kuer petitioner Baldau Singh filed title suit no. 109/96 against OP no.2, Bijay Bahadur Singh & Ors. for partition by meets and bounds in which petitioner Baldau Singh has filed list of document disclosing about the death certificate dated 10.6.95 and copy of the same has also been served upon Bijay Bahadur Singh. He further submitted that after getting knowledge of title suit no. 109/96 Bijay Bahadur Singh became angry and he also filed title suit no. 239/96 for declaration that deed of gift is forged and fabricated one. Learned counsel submitted that title suit no. 109/96 is still pending in the court of Subordinate Judge, Bhabhua where the genuineness of the death certificate produced by the petitioner is yet to be examined by the court. He also pointed out that complainant/OP no.2 has appeared in the said title suit and contesting the same.

4. The present criminal case has been filed challenging the genuineness of the death certificate dated 7.11.95. Now when the civil court is seized with the matter it would not be proper to allow police investigation in respect of same controversy to continue. Moreover, only a regular civil court can only declare whether a paper is forged or genuine one. From the facts and circumstances appearing in the case in my considered opinion, the present dispute is of civil nature.

5. Such being the position the continuance of the present prosecution would amount to an abuse of the process of the court. In the facts and circumstances, this application is allowed and the entire proceeding of complaint case no. 458 (C) of 1997 corresponding to Bhabhua PS case no. 1/98 is hereby quashed. OP no.2 will be at liberty to raise the points taken here in the civil suit pending

before the Subordinate Judge, Bhabhua.