

(2017) 04 PAT CK 0012

In the Patna High Court

Case No : 39406 of 2013

Chandrabali Thakur S/o Late Sadhu Sharan Thakur

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 420](#),
[Section 417](#), [Section 423](#)

Citation : (2017) 04 PAT CK 0012

Hon'ble Judges : Ashwani Kumar Singh

Bench : SINGLE BENCH

Advocate : Vinay Ranjan, ?Dr. Ajit Kumar, ?Sandeep Kumar

Final Decision : Allowed

Judgement

1. Heard Mr. Vinay Ranjan, learned counsel for the petitioner, Dr. Ajit Kumar, learned counsel for the State and Mr. Sandeep Kumar, learned counsel for the opposite party no.2.
2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 23.05.2013 passed by the learned Chief Judicial Magistrate 1st Class, Samastipur by which summon has been issued against the petitioner after finding a prima facie case to be made out under Sections 417, 420 and 423 of the Indian Penal Code.
3. According to the complainant-opposite party no.2, the petitioner negotiated to sale a piece of plot admeasuring 15

dhooors to her husband for a consideration of Rs.8.25 lacs. Her husband paid Rs.8.25 lacs by cash and cheque to the petitioner and, accordingly, a sale deed was drafted over which the impression of fingers of the complainant and her husband was taken by the co-accused Ashok Kumar Mishra on 08.06.2012. He also took their photographs and submitted the deed before the Registrar, Samastipur for registration. However, on the date of execution of the sale deed, the petitioner did not turn up on some false pretext, whereafter, the Registrar appointed co-accused Jai Shankar Sharan as Commissioner to visit the house of the petitioner in order to examine him and get the sale deed executed. The complainant has alleged that on 20.06.2012 when a copy of the sale deed executed on 08.06.2012 was obtained, she came to know that the description of the land was changed by making cutting and interpolation in the sale deed. She also alleged that the petitioner in collusion with the deed-writer and the Commissioner appointed by the Registrar had made interpolations in the sale deed even without the knowledge of the purchaser.

4. Learned counsel for the petitioner submitted that an out and out a civil dispute has been given a colour of criminal case with ulterior motive. He submitted that the complainant intends to dispossess the petitioner from other piece of plot which is in his name by using arm twisting tactics. He submitted that the complainant has already filed Title Suit No. 273 of 2012 in the court of Sub-Judge-I Samastipur in respect of the claim made in the present complaint which is still pending. He contended that there is interpolation in the sale deed. As a matter of fact, there were some typographical errors, which were corrected within full knowledge of the complainant -opposite party no.2 and her husband and once the sale deed was presented before the Registrar, no cutting or

interpolation was made.

5. On the other hand, learned counsel for the opposite party no.2 submitted that it is a gross case of cheating and, hence, the learned Magistrate has rightly taken cognizance of the offences. He submitted that though the husband of the complainant had paid money for a different plot, the accused petitioner transferred another plot by making cutting and interpolation over the sale deed behind the back of the complainant and her husband.

6. I have heard learned counsel for the parties and carefully perused the record.

7. I am of the opinion that the dispute is purely of civil nature. It is an admitted case of the complainant that when the sale deed was presented before the Registrar, the accused-petitioner had not visited the Registration Office. A Commission was appointed by the Registrar to visit the house of the petitioner and his in his presence, his signatures were taken over the sale deed after which, the deed got executed. It is not the case of the complainant that the land transferred through the deed does not belong to the petitioner rather the case of the complainant is that he had paid the amount for a different plot. In case a typographical error in the sale deed was corrected before presentation of the document and the same was presented subsequently before the Registrar and the Registrar after examining the document and appointing a Commission in order to examine the executant allowed the registration of the sale deed, it would not be a case of cheating or forgery. Moreover, the complainant has already filed a title suit in this regard where the disputed question of fact may be decided on the basis of oral and documentary evidence, which may be led on behalf of the parties.

8. In Indian Oil Corporation vs. NEPC India Ltd.

& Others [(2006) 6 SCC 736], the Supreme Court cautioned about a growing tendency to convert purely civil disputes into criminal case. The Supreme Court has also repeatedly held that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

9. Keeping the above propositions in mind, I am of the opinion that allowing the criminal prosecution to continue in the present case would amount to an abuse of the process of court.

10. Accordingly, the impugned order dated 23.05.2013 passed by the learned Chief Judicial Magistrate 1st Class, Samastipur and the entire proceedings arising out of a Complaint Case No.2030 of 2012 are hereby quashed.

11. The application stands allowed.

12. It is needless to say that any observation made in the present application should not affect the outcome of the title suit pending before the Sub-Judge, Samastipur.