

**(2006) 10 PAT CK 0032**

**In the Patna High Court**

**Case No : Criminal Misc. No. 16944 of 2004**

Lakhichand Agrawal and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

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**Date of Decision : 17-10-2006**

**Acts Referred:**

**Citation : (2006) 10 PAT CK 0032**

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## **Judgement**

Sadanand Mukherjee, J.—Heard.

2. This is an application for quashing the order taking cognizance, dated 29.1.1999 and entire criminal prosecution, in Complaint Case No. 1866/97 and Trial No. 283/2004 passed by the learned Sub-Divisional Judicial Magistrate, Gopalganj.

3. The case of the complainant is that there was partition between Kamla Prasad Agrawal (Opposite Party No. 2) and his brothers. In the partition his brother, Lakhichand Agrawal (petitioner No. 1) was allotted a share of 570 square feet of land only. Opposite Party No. 2, namely, Kamla Prasad Agrawal, filed a petition in the court of Chief Judicial Magistrate, Gopalganj being Complaint case No. 1866 of 1997(Annexure-"1" to this application) under Sections 465/467/469/471 of the Indian Penal Code against the present petitioners who were made accused Nos. 1 and 2 as well as two other accused persons (accused Nos. 3 and 4) against whom proceeding was quashed vide order dated 19.4.2000 passed in Criminal Misc. No. 20812 of 1999. The complaint petition was referred to the court of Sub-divisional Judicial Magistrate, Gopalganj under the provisions of Section 192 of the Code of Criminal Procedure for inquiry and disposal. After inquiry the learned Sub-Divisional Judicial Magistrate found prima facie case and directed to issue process against the petitioners. Thus, the petitioners have challenged the said order in this application.

4. As per partition deed, the allotted share in favour of the petitioners has been described in Schedule-3 and Schedule-2 properties were allotted to the complainant. It is alleged that the petitioners executed sale deed in favour of

accused Nos. 3 and 4 (non-petitioners) with respect to more than their allotted share. As per the prosecution case the petitioners were allotted 605 square feet but they sold 706 square feet, so they have committed forgery vide Annexure-"1" to the application. On behalf of the petitioners, it has been submitted that the complainant has got no grievance in respect of 605 square feet. He has got grievances in respect of 101 square feet. It is also stated that the petitioners were allotted a path for their personal use and the petitioners have transferred right of user of 101 square feet to their vendee (accused Nos. 3 and 4). It is, therefore, submitted that the petitioners have not sold any excess area. It is also submitted that this complaint has been filed as the complainant-opposite party No. 2 was trying to purchase the property in question but the petitioners refused to transfer the same in their favour. The complainant was the tenant of the petitioners and their vendee and he was not vacating the premises in question. It has been submitted that the vendee of the petitioners filed Eviction Suit No. 13/97/2/2000 before the court of Sub-Judge, Gopalganj which was allowed by the trial court and remained valid upto this Court. The complainant (tenant) lost his case vide C.R.No. 1274 of 2002(copy of the order is Annexure-"2" to this application). After filing of the Eviction Suit, notices were served on tenant/complainant and thereafter this complaint case was filed as the counter blast of the aforesaid eviction suit. At the subsequent stage, the complainant filed Title Suit No. 157 of 2001 against all the accused persons of the complaint petition including the petitioners which is pending in the court of Sub Judge-III, Gopalganj.

5. It is worthwhile to point out that vide order dated 19.4.2000 passed in Criminal Misc. No. 20812 of 1999 a Bench of this Court presided over by Hon'ble Mr. Justice M.L. Viswaquashed the cognizance in respect of accused Nos. 3 and 4(Annexure-"3" to this application). It has also been submitted that the petitioners were residing at Pune and no summons or any process was ever served upon the petitioners. It has also been submitted that the petitioner No. 1 is aged person and he is suffering from various types of ailments. It has also been submitted that the petitioner No. 2 is old lady and she is also suffering from several diseases (Annexure-"4" series to the application). It has been submitted that even if the case is taken on its face value, on the perusal of the complaint petition, only civil dispute is made out against the petitioners.

6. It appears that the case has to be considered only on the complainant's point of view and the defence has not yet been given chance to produce any evidence at that stage.

7. In this connection, in a recent decision the Hon'ble Supreme Court as reported in Indian Oil Corporation Vs. NEPC India Ltd. and Others, reiterated the principles relating to exercise of jurisdiction u/s 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings which are relevant for the present purpose:

(i). A complaint can be quashed where the allegations made in the complaint,

even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations, Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.

(ii). A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii). The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv). The complainant is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v). A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

8. In this case, cognizance has been taken of the offence under Sections 465/467/469/471 of the Indian Penal Code. Section 465 of the Indian Penal Code relates to punishment for forgery. It states "whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both." Section 464 of the Indian Penal Code presupposes either making or signing or sealing or executing a document or part of a document by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed. The making of the false document also means alteration of the document, cancellation of document etc. without any lawful authority. Section 467 of the Indian Penal Code relates to forgery of the document which purports to be valuable security or a will or an authority. Section 469 of the Indian Penal Code relates to forgery and Section

471 of the Indian Penal Code relates to using as genuine a forged document.

9. The settled principles of law is that neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability of genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint. In the instant case, the allegation is that of selling of excess area of land than obtained by the petitioners in the partition. The aforesaid excess area of land is said to be in the share of the complainant as alleged by the complainant. It has already been pointed out that so far as the purchasers are concerned, cognizance of the offence against them has been quashed. However, in the complaint petition, the complainant opposite party No. 2 has alleged criminal offence committed by the petitioners. It has also been submitted civil remedy is available on the materials in this complaint case and no case of criminal offence is made out against the petitioners.

10. In view of the settled principles of law, as stated above, existence or averment of civil remedy in respect of disputes, as above, does not bar criminal prosecution if the allegations in the complaint disclose criminal offence.

11. The aforesaid position can be ascertained only at the stage of charge. The court below shall then see whether criminal offence under Sections 465/467/469 and 471 of the Indian Penal Code is made out against the petitioners, after hearing the Parties.

12. In the facts and circumstances of the case and also in view of the settled principles of law, stated above, at the stage of charge, the court below shall hear the parties on the above points, as stated above and pass an order in respect of charge according to law.

13. With the aforesaid observation, this application stand disposed of.