

(2011) 01 PAT CK 0098

In the Patna High Court

Case No : Criminal Miscellaneous No. 24050 of 1999

Nirmala Devi and Others

APPELLANT

Vs

The State of Bihar and Ram Narayan Singh Yadav

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2011) 59 BLJR 2227

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Eight Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 5.5.1999 passed by the learned Chief Judicial Magistrate, Rohtas at Sasaram in Sasaram (T) P.S. Case No. 454 of 1998, G.R. No. 1436 of 1998/ Tr. No. 1065 of 1999, whereby after submission of the chargesheet , the learned Chief Judicial Magistrate has taken cognizance of offence under Sections 406 and 420 of the Indian Penal Code.

2. Short fact of the case is that Opp. Party No. 2 had initially filed a complaint in the court of learned Chief Judicial Magistrate, Sasaram , Rohtas , which was numbered as Complaint Case No. 21 of 1998 against all the Petitioners and Manrajo Devi . After filing of the complaint, it was sent to the police for its registration and investigation u/s 156(3) of the Code of Criminal Procedure and, accordingly, an F.I.R. vide Sasaram (T) P.S. Case No. 454 of 1998 was registered on 10.9.1998 for the offences under Sections 420 and 406 of the Indian Penal Code against all the accused persons. As per the F.I.R., the informant/ complainant had purchased in his wife's name two Kathas of land, appertaining to Khata No. 23, Plot No. 322 at Mauja Pali , Dehari, District- Rohtas from one Most. Lakhpat Kunwar Wife of Late Babu Lal Singh through registered deed

dated 27.12.1967 and thereafter he came in peaceful possession over the land in question. It further appears that after the death of Most Lakhpat Kunwar, her two daughters, namely, Sukiya Devi (Petitioner No. 6) and Manrajo Devi in connivance with other accused persons started talking for getting the said land transferred and finally by committing fraud and cheating, accused persons got a deed executed and finally Petitioner Nos. 1 to 4 got the sale deed executed in their favour on 25.11.1997 vide Sale deed Nos. 12847, 12848 and 12849. It was alleged that Petitioner Nos. 7 and 8 had become witnesses to the sale deed. Further allegation of the informant in the present case is that while accused persons on the basis of the said forged sale deed came to claim over the land in question, accused persons were requested to get sale deed cancelled. However, no step was taken by accused persons and thereafter the complainant finally went to the police and, thereafter, filed a complaint petition, which was referred to the police and F.I.R. was registered. After registering the First Information Report, the police investigated the case and, thereafter, chargesheet was submitted. After submission of the chargesheet, the learned Chief Judicial Magistrate, Rohtas at Sasaram by the impugned order has taken cognizance of offences under Sections 406 and 420 of the Indian Penal Code.

3. Aggrieved with the order of cognizance, Petitioners approached this Court by filing the present petition, which was admitted on 8.2.2000. While admitting, order of stay was also passed.

4. Sri Dhruv Narayan, learned Senior Counsel appearing on behalf of the Petitioners, while challenging the order of cognizance and entire criminal proceeding arising out of Sasaram (T) P.S. Case No. 454 of 1998, submits that from the contents of the F.I.R. itself, it is evident that the dispute was purely civil in nature and, as such, neither any offence was made out nor the learned Chief Judicial Magistrate was required to proceed with the case after passing order of cognizance. Learned Senior Counsel has further argued that even after filing of the F.I.R., Petitioners had earlier approached this Court by filing a quashing application u/s 482 of the Code of Criminal Procedure vide Cr. Misc. No. 1253 of 1997. However, the said petition was disposed of granting liberty to the Petitioners to approach this Court, if court takes cognizance of offence and, accordingly, after order of cognizance the present petition was filed. Learned Senior Counsel for the Petitioner has further referred to Annexure-4 to the petition with a view to impress upon the Court that the vendor of the land in question was having title over the disputed land and the said land was mutated in her favour and, as such, the vendor had rightly transferred the land to the Petitioners. In sum and substance, it has been argued by Sri Dhruv Narayan, learned Senior Counsel for the Petitioners that nature of accusation is purely civil in nature and, as such, the criminal court may not be allowed to be abused. Accordingly, it has been prayed to set aside the order of cognizance.

5. Sri Rajballabh Singh, learned Addl. Public Prosecutor appearing on behalf of the State has vehemently opposed the prayer of the Petitioners. It was submitted

by Sri Singh, learned Addl. Public Prosecutor that after registration of the F.I.R., the police thoroughly investigated the case and after collecting sufficient materials has submitted chargesheet . It was further submitted that the order of cognizance was passed on the basis of materials available in the case diary as well as materials available on record and, as such, this Court may not interfere at the preliminary stage of a case. It was further submitted that under the Code of Criminal Procedure, there were other remedies available to the Petitioners. It was also argued that from the F.I.R. itself, it is evident that the vendors were knowing that the land in question was already transferred to the informant by Late Lakhpat Kunwar through registered sale deed, which was executed on 27.12.1967 and one of the accused in the present case was also witness to the said sale deed and at subsequent stage also, the said accused had become a witness. It was submitted that all the accused persons in connivance with each other with a view to grab the legally purchased land of the informant had got a subsequent sale deed executed. Accordingly, it has been prayed to reject the present petition.

6. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. So far as plea of the Petitioners that the case is of civil in nature is concerned, the Court is of the opinion that the informant was having two remedies available to him on accusation made in the F.I.R. For the purposes of commission of offences, which is evident from the F.I.R., the informant had rightly filed a complaint petition, which was referred to the police and, accordingly, an F.I.R. was registered. On perusal of the F.I.R. the Court is of the opinion that there was no error in registering the F.I.R. and once the police after investigation had submitted chargesheet , the learned Chief Judicial Magistrate has rightly passed the order of cognizance, which is not required to be interfered with that too at the initial stage of the criminal proceeding, while exercising power u/s 482 of the Code of Criminal Procedure. Time without number, it has been held that the power u/s 482 of the Code of Criminal Procedure is to be exercised in exceptional and rarest of rare cases on the basis of materials available on record. The Court is of the opinion that the present case cannot be put in the category of exceptional or rarest of rare cases.

7. Accordingly, the petition stands rejected.

8. In view of rejection of the present petition, interim order of stay dated 8.2.2000 stands automatically vacated. Let a copy of this order be sent to the court below forthwith.