

Abdul Samad Son of Aas Mohammad Vs The State of Bihar

Court: PATNA HIGH COURT

Date of Decision: Aug. 23, 2017

Acts Referred: [Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 420](#), [Section 468](#),

Hon'ble Judges: Sanjay Kumar

Bench: SINGLE BENCH

Advocate: Najmul Hoda, Suresh Prasad Sah @ Baranwal, Mayanand Jha

Final Decision: Allowed

Judgement

1. This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 13.02.2014 passed by the

learned Chief Judicial Magistrate, Katihar in G.R. No. 885 of 2013 arising out of Katihar P.S. Case No. 167 of 2013 whereunder the learned

Magistrate finding prima facie case for the offence under Sections 467, 468, 406 and 420 of the Indian Penal Code took cognizance of offence

against this petitioner and ordered for issuance of summons.

2. Heard both sides and perused the record.

3. The informant lodged an F.I.R. with S.H.O. of Katihar Police Station alleging inter alia that her five brothers executed a deed of agreement in

favour of this petitioner for executing the sale deed with respect to 40 decimal land for a total consideration of Rs. 15,00,000/-. The said land was

her ancestral land, which was acquired by her father. After death of her father, she along with her five brothers and mother came in possession

over the said land. Her five brothers in order to deprive the informant have executed deed of agreement and in the said agreement, they mentioned

the name of the informant and also forged the signature of the informant and thereby, all her five brothers and this petitioner cheated the informant

and committed breach of trust by retaining the earnest money with respect to the deed of agreement.

4. The learned counsel for the petitioner submits that the petitioner had contracted with the brothers of the informant for purchasing the said land

for a total consideration of Rs. 15, 00,000/-. The land in question was purchased by Zuddin. The brothers of informant received an amount of Rs.

15,00,000/- after executing a deed of agreement in favour of the petitioner. The Opposite Party No. 2 filed Partition Suit No. 347 of 2012 for

partition of landed property left by her father. In the said partition suit, the informant had not mentioned the land, which is the subject matter of

deed of agreement, which shows that the informant had already entered into agreement to transfer the land in favour of the petitioner. It was further

submitted that one Hena Rani has filed a Title Suit No. 37 of 2007 against the father of the informant. After the death of her father, the informant

and her five brothers and mother were substituted as defendant nos. 1 to 1(f). The said title suit was filed with respect to the land, which is subject

matter of the present case. In the said title suit, the petitioner had filed intervener petition for making him as party to the suit. The informant and her

brothers filed rejoinder and in the said rejoinder petition they admitted that she along with her brothers has already entered into an agreement for

executing a sale deed in favour of the petitioner. She has further admitted that the petitioner has been put in possession over the said land. The

learned counsel in view of the above facts has submitted that the dispute between the parties is purely a civil dispute. The petitioner is an intending

purchaser and even after making payment of Rs. 15, 00,000/-, he is facing litigation which has been launched by the informant and her brothers,

who are in collusion with each other.

5. The learned counsel for the informant as well as the learned APP for the State opposed the submission. It has been submitted that the court

below found material constituting the offence of cheating, fraud and forgery in manipulating a deed of agreement has rightly taken cognizance and

so, no interference is required under inherent jurisdiction under Section 482 Cr.P.C.

6. On perusal of F.I.R. and annexures available on record, I find that the petitioner is intending purchaser of 42 decimal land. The brothers of the

informant had executed a deed of agreement in favour of the petitioner. The informant is also the party to the said agreement. It is not in dispute

that the informant and her brothers jointly filed a petition in Title Suit No. 37 of 2007 wherein admitted that she (informant) along with her brothers

had received the earnest money from the petitioner and put him in possession over the said land. A Title Suit No. 37 of 2007 is also pending with

respect to the land in question. The dispute between the parties appears to be a civil dispute. It further appears that the five brothers of the

informant, who are party to the agreement in question, have been exonerated by the trial court as no cognizance has been taken against them. The

dispute between the parties are purely a civil dispute and two civil suites bearing Title Suit No. 37 of 2007 and Partition Suit No. 347 of 2012 are

still pending in the civil court. In the circumstance, the criminal prosecution of this petitioner would be an abuse of process of court.

7. In view of above discussions, the impugned order dated 13.02.2014 passed in G.R. Case No. 885 of 2013 taking cognizance against the

petitioner and his criminal prosecution on that basis is hereby quashed and this application is allowed.