

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27623 of 2018

Arising Out of PS. Case No.-687 Year-2015 Thana- MUNGER COMPLAINT CASE
District- Munger

=====

- 1. Surendra Kumar, Son of late Hriday Narayan.
- 2. Sanjay Kumar, son of Sri Surendra Kumar,

Both are resident of Dalhatta Bazar, P.S.- Kotwali, District- Munger, at present residing at Hospital More, Jehanabad, P.S.- Jehanabad, District- Jehanabad.

... .. Petitioner/s

Versus

- 1. State of Bihar
- 2. Pramendra Bhushan Prakash, son of Tara Chand, resident of Dalhatta Bazar, P.S.- Kotawali, District- Munger.

... .. Opposite Party/s

=====

Appearance :

For the Petitioners : Mr. Gopal Jha, Advocate.
Mr. Kumar Chandra Shekhar, Advocate.

For the State : Mr. Satyavarat Verma, APP

For the Opposite Party No. 2: Mr. Surya Narayan Sah, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 23-01-2025

The present petition under Section 482 Cr.PC has been preferred by the petitioners against the impugned order dated 18.04.2016 whereby Shri Arvind Kumar Singh, learned Judicial Magistrate, 1st Class, Munger, has taken cognizance against the accused persons including the petitioners of the offences punishable under Sections 323, 420, 467, 468 and 504 of the Indian Penal Code in Criminal Complaint No. 687 of 2015 titled Pramendra Bhushan Vrs. Surendra Kumar and Others.

2. The Criminal Complaint was filed by one Pramendra Bhushan against the petitioners and other three co-accused alleging that house constructed on 5 *katthas* of land situated in *Mauza Dalhatta Bazar*, bearing Tauzi No. 1338, Ward No. 4, Holding No. 571 (new), 69 (old) by a registered sale deed on 22.08.1957. It is further alleged that 01 *kattha* of the same land was again sold by the petitioner Surendra Kumar in favour of co-accused Smt. Shashi Devi and Manoj Kumar Vishwakarma on 12.06.2015 and, thereafter, the purchasers Smt. Shashi Devi and Manoj Kumar Vishwakarma came to the house of the Complainant and started asking for possession of the same.

3. I heard learned counsel for the petitioners, learned APP for the State and learned counsel for the Opposite Party No.2.

4. Learned counsel for the petitioners submits that the petitioners are innocent and have falsely been implicated in this case. He further submits that as per the allegation, no case is made out against the petitioners or any other accused whatsoever because there is no allegation that the petitioners or any accused has made any misrepresentation to the Complainant or induced him to part with any property, nor is any allegation that any document is forged and fabricated. As per the allegation, the sale deed is genuine and not forged, though, it is alleged that the petitioner Surendra Kumar has executed the sale deed in question without any title in the property, because he had already sold the same property to the Complainant in 1957.

5. However, learned APP for the State and learned counsel for the Opposite Party No. 2 defend the impugned order submitting that there is no illegality or infirmity in the impugned order and hence, the present petition is liable to be dismissed.

6. Learned counsel for the Opposite Party No. 2 submits that the petitioner Surendra Kumar had already sold the

land in question to the Complainant in 1957, and, thereafter, he has no longer any title in the same. But despite such lack of title and interest in the property, he has again executed the sale deed on 12.06.2015 in favour of Smt. Shashi Devi and Manoj Kumar Vishwakarma and hence, he has committed forgery and cheating against the Complainant/O.P. No.2 herein.

7. Before I proceed to consider the rival submissions of the parties, it would be pertinent to see the scope and ambit of Section 482 of the Cr.PC. Here it would be profitable to refer to **Amit Sinha Vs. State of Bihar, (2024 SCC online Pat 6330)** and **Harihar Sah And Others vs. State of Bihar and Anr., (2023 SCC OnLine Pat 9582)**, wherein this Court, after referring to relevant statutory provisions and binding judicial precedents, has held that for taking cognizance of any offence and issuing summons to any accused in a complaint case, there must be a *prima facie* offence made out on the basis of the allegation made in the complaint and the statements made by the complainant and his witnesses during inquiry under Section 202 Cr.PC. However, such allegation or the statements should not be patently absurd and inherently improbable to a prudent mind. Moreover, the allegation/statements made in the complaint and during inquiry under Section 200 Cr.PC should be examined as

a whole, but the veracity of such statements could not be examined at this stage. The statements have to be taken at their face value to see whether *prima facie* case is made out or not. Moreover, if the given set of facts makes only a civil dispute, the complaint or the cognizance/summoning order should be quashed to prevent abuse of the process of court and promote ends of justice.

Whether prima facie case is made out against the Petitioners.

8. Now, the question for consideration is, whether the allegation made in the complaint or the statements of the witnesses as recorded in support of the same taken at their face value make out any case against the accused.

9. As per the allegation in the complaint and the statements of the complainant and his witnesses during inquiry under Section 200 Cr.PC, learned Magistrate, has taken cognizance of offences punishable Sections 323, 420, 467, 468 and 504 of the Indian Penal Code vide the impugned order dated 18.04.2016.

10. **Section 467** of the Indian Penal Code provides for punishment for forgery of valuable security, Will etc. **Section 468** of the Indian Penal Code provides for punishment

for committing forgery with intent to use the forged document or electronic record for the purpose of cheating. The offence is cognizable and non-bailable.

11. Section 420 of the Indian Penal Code provides for punishment for cheating whereby dishonestly inducing the person deceived to deliver any property to any person or to make, alter or destroy the whole or any part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security. The offence is punishable by imprisonment upto seven years.

12. Coming to the case on hand, I find that the sum and substance of the allegation is that the landed property belonging to the complainant has been sold by the accused-petitioner, Surendra Kumar by the sale deed dated 12.06.2025.

13. The first question which arises for consideration of this Court is whether the sale-deed executed by the accused/petitioner, Surendra Kumar in favour of the accused, Shashi Devi and Manoj Kumar can be held to be a forged document.

14. Forgery has been defined in Section 463 of the Indian Penal Code which provides as follows:

“463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public

or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

15. The basic ingredients of forgery as explained by **Hon’ble Supreme Court in Sushil Suri V. Central Bureau of Investigation, [AIR 2011 SC 1713]** are as follows:

“ 1) The making of a false document or part of it and (2) such making should be with such intention as is specified in the section, viz., (a) to cause damage or infringe to (i) the public, or (ii) any person; or (b) to support any claim or title; or (c) to cause any person to part with property, or (d) to cause any person to enter into an express or implied contract; or (e) to commit fraud or that fraud may be committed.”

16. **Section 464** of the Indian Penal Code defines making of false documents. It reads as follows:

“ 464. Making a false document. —

A person is said to make a false document or false electronic record—First — Who dishonestly or fraudulently—

(a)makes, signs, seals or executes a document or part of a document;

(b)makes or transmits any electronic record or part of any electronic record;

(c)affixes any electronic signature on any electronic record;

(d)makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly — Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly — Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Illustrations

17. Hon’ble Supreme Court had occasion to consider the similar facts and circumstances in **Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr., [(2009) 8 SCC 751]** which had traveled from the district of Madhubani, Bihar. In this case also, the complainant had made allegation that his land was sold by the accused without having any title to the land. The co-accused were witnesses, scribe and vendor in regard to the sale-deed. Ld. Magistrate had taken cognizance of offences punishable under Sections 467, 471, 420 and some other sections of IPC. After analysis of Section 464 of the Indian Penal Code, Hon’ble Supreme Court clearly held as follows:

“ **17. When a document is executed by a person claiming**

a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

(Emphasis supplied)

18. Hon’ble Supreme Court in Randheer Singh

v. State of U.P., [(2021) 14 SCC 626], also held as follows:

“ 24. A fraudulent, fabricated or forged deed could mean a deed which was not actually executed, but a deed which had fraudulently been manufactured by forging the signature of the ostensible executants. It is one thing to say that Bela Rani fraudulently executed a power of attorney authorising the sale of property knowing that she had no title to convey the property. It is another thing to say that the power of attorney itself was a forged, fraudulent, fabricated or manufactured one, meaning thereby that it had never been executed by Bela Rani. Her signature had been forged. It is impossible to fathom how the investigating authorities could even have been prima facie satisfied that the deed had been forged or fabricated or was fraudulent without even examining the apparent executant Bela Rani, who has not even been cited as a witness.

19. In the given case on hand also, there is no allegation of impersonation by any accused person while executing the sale-deed in question. No one has forged signature of the complainant or anybody else. Accused, Surendra Kumar has executed the sale-deed in regard to the land in question in favour of the co-accused, Shashi Devi and Manoj Kumar. Hence, the sale-deed in question is genuine and not a forged

document. Whether it conveys title to the transferee is a legal question to be decided by competent Civil Court. But Sections 467 or 468 of the Indian Penal Code do not get attracted against the accused-petitioner.

20. As for application of Section 420 of the Indian Penal Code in the alleged facts and circumstances of the case on hand, I find that the ingredients of this Section are as follows as explained by Hon'ble Supreme Court in **Mohammed Ibrahim case (supra)** :

“18.....

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the

sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner."

(Emphasis supplied)

21. As such, representation by the Accused to the deceived doing fraudulent or dishonest inducement is *sine qua non* for making out offence under Section 420 of the Indian Penal Code. But in the case on hand, I find that there is no allegation of the Complainant that any Accused has made any representation to him to part with any property. As such, for want of any representation, question of any fraudulent or dishonest inducement of the Complainant does not arise.

22. Moreover, the complainant has not parted with any property to the Accused persons, nor has he executed the sale-deed. As such, his title, if any, to the land in question, is

still safe, because his title cannot get conveyed to purchaser if the conveyance deed/sale-deed has been executed by someone else, who is not possessed of the title to the land in question. A purchaser can get the title conveyed only if the seller has title to the property. It is a settled principle of law that no one can transfer better title than his own, as **Hon'ble Supreme Court** in **Eureka Builders Vs. Gulabchand, (2018) 8 SCC 67**, has clearly held as follows:

“35. It is a settled principle of law that a person can only transfer to other person a right, title or interest in any tangible property which he is possessed of to transfer it for consideration or otherwise. In other words, whatever interest a person is possessed of in any tangible property, he can transfer only that interest to the other person and no other interest, which he himself does not possess in the tangible property.

36. So, once it is proved that on the date of transfer of any tangible property, the seller of the property did not have any subsisting right, title or interest over it, then a buyer of such property would not get any right, title and interest in the property purchased by him for consideration or otherwise. Such transfer would be an illegal and void transfers.”

(Emphasis supplied)

23. Here, it would be also pertinent to refer to **JIT Vinayak Arolkar Vs. State of Goa & Ors. (Criminal Appeal No. 393 of 2024)** as decided by **Hon'ble Apex Court** just four days back on 06.01.2025. In that case, undivided share in landed property was sold by the accused and the FIR was lodged by the co-sharer. In this case, Hon'ble Supreme Court quashed the FIR

holding as follows, relying upon **Mohammed Ibrahim Case** (Supra):

“12.1 In this case, it is impossible to understand how the appellant deceived the 4th respondent and how the act of execution of sale deeds by the appellant caused or was likely to cause damage or harm to the 4th respondent in body, mind, reputation or property. The appellant has not purported to execute the sale deeds on behalf of the 4th respondent. He has not purported to transfer the rights of the 4th respondent. There is no allegation that the appellant deceived the 4th respondent to transfer or deliver the subject property.”

(Emphasis supplied)

24. As such, no offence under Section 420 of the Indian Penal Code is made out in the case on hand.

25. There is also no allegation made by the Complainant in his statements as made under Section 200 Cr.PC which may attract application of Section 323 and 504 IPC

Conclusion/Finding of this Court

26. Hence, in my view, the complaint does not disclose any offence, much less any offence under Sections 323, 420, 467, 468 and 504 of the Indian Penal Code. The alleged facts and circumstances of the present case, at most, constitute a dispute of purely civil nature between the parties for which remedy lies before a civil court by filing appropriate civil suit. As per the material on record, the Complainant/O.P. No.2 has

already filed a civil suit bearing T.S. 262/2015 in the Court of Sub-Judge, Munger for declaring the sale deed in question dated 12.06.2015 as void.

27. Hence, the impugned order is not sustainable in the eye of law and is liable to be quashed and set aside to prevent the abuse of the process of Court and meet the ends of justice.

28. Accordingly, the present petition stands allowed, quashing and setting aside the impugned order dated 18.04.2016, passed by Sri Arvind Kumar Singh, learned Judicial Magistrate 1st Class, Munger, in Complaint Case No. 687 of 2015.

(Jitendra Kumar, J.)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.01.2025
Transmission Date	24.01.2025