

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr.M.P. No. 2939 of 2014**

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| 1. Navin Kumar Sinha     |                             |
| 2. Ujjwal Narayan        | <b>... Petitioners</b>      |
| <b>-Versus-</b>          |                             |
| 1. State of Jharkhand    |                             |
| 2. Ranjana Kumari Narain | <b>... Opposite Parties</b> |

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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| For the Petitioners | : Mr. Himanshu Kumar Mehta, Advocate<br>Mrs. Manjusri Patra, Advocate<br>Mrs. Shrestha Mehta, Advocate |
| For the State       | : Mr. Prabhu Dayal Agarwal, S.P.P.   |
| For O.P. No.2       | : Mr. Sudhir Sahay, Advocate   |

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05/21.11.2023 Heard Mr. Himanshu Kumar Mehta, learned counsel for the petitioners, Mr. Prabhu Dayal Agarwal, learned counsel for the State and Mr. Sudhir Sahay, learned counsel for opposite party no.2.

2. Vide order dated 19.09.2022, the matter was referred to the Member Secretary, JHALSA for mediation between the parties. The mediation report is on the record, which suggests that the mediation was partially successful with petitioner no.2, however, petitioner no.1 did not appear before the Member Secretary, JHALSA.

3. This petition has been filed for quashing of the entire criminal proceedings including the order taking cognizance dated 20.12.2013 arising out of the Complaint Case No.1610 of 2012, dated 10.05.2012, pending in the Court of the learned Judicial Magistrate, 1<sup>st</sup> Class, Giridih.

4. Mr. Himanshu Kumar Mehta, learned counsel for the petitioners submits that initially the complainant (opposite party no.2) had lodged FIR being Giridih (M) P.S. Case No.4 of 2011, which was investigated by the police and final form was submitted stating therein that the case is civil in nature. He submits that thereafter the present protest complaint case was

filed by the complainant alleging therein that the complainant is one of the daughter of Late Jagat Narayan Prasad, who died leaving behind two sons and five daughters as his legal heirs. The complainant's father inherited properties from his father who died in the year 1996, leaving behind all the properties intestate. It was further alleged that the complainant and other daughters of Late Jagat Narayan Prasad entrusted their respective shares to the petitioners and another accused person. It was also alleged by the complainant that in the year 2008, both her brothers have made false and fabricated partition deed of dated 25.12.2004 and based on the partition deed, they started selling land of the respective shares of the complainant and her other sisters and have executed sale deed in favour of other vendee. It was further alleged that by the complainant that the complainant filed a FIR being Giridih(M) P.S. Case No.4 of 2011 against the petitioners and other accused persons in which police submitted final form on 24.10.2011 stating therein that the case is of civil dispute. Thereafter, the complainant filed the present protest petition and after adducing evidence, the learned Court has been pleased to take cognizance against the petitioners.

5. By way of referring Annexure-2 of the petition, Mr. Himanshu Kumar Mehta, learned counsel for the petitioners submits that the partition deed dated 25.12.2004 suggests that there is partition between the legal heirs of Late Jai Narayan Prasad (grandfather of the petitioners) and not their father Jagat Narayan Prasad. He further submits that the complainant is the sister of the petitioners and the allegations are that the petitioners have sold certain portion of the land. He also submits that for the dispute in question, there are two partition suits, being Partition Suit Nos.85/2017 and 25/2018,

which are still pending and the petitioners and the complainant are parties to those partition suits filed by other co-sharer of the properties. He submits that in view of that, to allow to continue the proceeding will amount to abuse of process of law.

6. Mr. Sudhir Sahay, learned counsel for opposite party no.2 submits that the land in question has been sold by the petitioners and in view of that, criminality is made out and if the criminality is made out, both the civil and criminal cases can go simultaneously and in that view of the matter, this Court may not exercise its power, at this stage.

7. Mr. Prabhu Dayal Agarwal, learned counsel for the State submits that final form was submitted by the police and, thereafter, on the protest petition, the learned Court has been pleased to take cognizance against the petitioners.

8. The Court has gone through the contents of the complaint case and finds that the allegations are there of selling certain portions of the land, which are alleged to be a joint property. It further appears from the supplementary affidavit brought on record that two Partition Suit Nos. 85/2017 and 25/2018 for the same property were filed by co-sharer and the petitioners and complainant are also parties in that partition suits.

9. Further, the police has investigated the matter and submitted final form saying that this matter is of civil in nature, however, the learned Court has been pleased to take cognizance against the petitioners on the protest petition. Looking into the pendency of two partition suits filed by one of the co-sharer of the property, in which, the petitioners and the complainant are also parties in those partition suits, it appears that for civil wrong, criminal proceeding has been initiated against the petitioners. There is no doubt that

if the criminality is made out, both criminal and civil cases can go simultaneously, however, if the criminality is not made out, to allow to continue the proceeding, will amount to abuse of process of law. This Court finds that for a civil wrong, criminal case has been instituted against the petitioners.

10. In view of the above facts, the entire criminal proceedings including the order taking cognizance dated 20.12.2013 arising out of the Complaint Case No.1610 of 2012, dated 10.05.2012, pending in the Court of the learned Judicial Magistrate, 1<sup>st</sup> Class, Giridih are quashed.

11. It is made clear that what has been discussed hereinabove for deciding the present Cr.M.P. will not prejudice the pending partition suits and the same shall be decided in accordance with law.

12. Accordingly, this petition is allowed and disposed of.

**(Sanjay Kumar Dwivedi, J.)**

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