

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Cr.Misc. No.18394 of 2007**  
**RAMA NAND MISHRA, SON OF SHRI RAM SURESH MISHRA,**  
**RESIDENT OF MOHALLA-HATHUWA MARKET, P.S. CHAPRA**  
**TOWN, DISTRICT-SARAN.....PETITIONER.**

**Versus**

- 1. THE STATE OF BIHAR**
- 2. PUSHPA MISHRA, WIFE OF LAXMAN KUMRA MISHRA,**  
**RESIDENT OF VILLAGE BANNI, P.S. KHAIRA, DISTRICT-**  
**SARAN, AT PRESENT-UMA NAGAR, P.S. CHAPRA,**  
**MUFFASSIL, DISTRICT-SARAN.**  
**.....OPPOSITE PARTIES.**

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<b>For the Petitioner</b>	<b>: M/s. Vishwanath Prasad Sinha, Senior Advocate,</b> <b>Sanjay Kumar Singh and Yugal Kishore,</b> <b>Advocates.</b>
<b>For the State</b>	<b>: Mr. Jharkhandi Upadhyay, A.P.P.</b>
<b>For O.P. No.2</b>	<b>: Mr. Akhileshwar Pandey, Advocate.</b>

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**O R D E R**

This application is directed against the order dated 24.1.2007 passed by the learned Sub Divisional Judicial Magistrate, Saran at Chapra, in Protest Petition No.805 of 2004, Enquiry No.57 of 2004 filed in Chapra(Mufassil) P.S. Case No.450 of 2000 arising out of Complaint Case No.1950 of 2000 whereby the learned Magistrate has taken cognizance under Section 420 I.P.C. against the petitioner.

Initially, the complainant, one Pushpa Mishra, impleaded as O.P. No.2 herein, filed a complaint on 23.9.2000 being Complaint Case No.1950 of 2000 alleging inter alia that the petitioner herein, her brother-in-law(bhaisur), approached her with an assurance that if she was ready to dole out Rs.70,000/- for a piece of land measuring 10 kathas and gave another Rs.25,000/- towards registration expenses

then he could get her a nice plot of land in a good locality in Chapra Town. Taken by the assurances she deposited Rs.93,702/- with the petitioner in instalments towards the estimated cost of the land in question. It is said that the petitioner bought 8 kathas of land appertaining to khata no.346, plot no.2 on 6.9.1994 and informed the complainant that the remaining 2 kathas would be purchased subsequently. Although the complainant took possession over the lands purchased she was not given the registration papers thereof and when she requested for the same she was given to understand that the entire papers would be given to her after purchase of the remaining lands. It is alleged that when she insisted on being furnished with the papers, the petitioner herein handed the entire file to her on 6.9.2000 and on perusal of the same she was surprised to see that only 2 kathas of land had been purchased for Rs.14,000/- for her and the remaining 6 kathas he had purchased for himself.

The complaint petition was sent under Section 156(3) Cr.P.C. to the concerned police station and on the basis thereof Chapra(Mufassil) P.S. Case No.450 of 2000 was registered and after due investigation a final report was submitted. The complainant then filed a petition under Section 173(viii) Cr.P.C. for reinvestigation of the case and as the petition was not pressed the Chief Judicial Magistrate by his order dated 17.4.2004 accepted the final report and sent the case to the court of the Sub-Divisional Judicial Magistrate for enquiry. In the meanwhile another petition was filed before the Chief Judicial Magistrate praying therein not to proceed with the inquiry as

her prayer for reinvestigation had been allowed by order dated 30.4.2002. The learned Chief Judicial Magistrate rejected the said petition as there was no order for reinvestigation. Cr. Revision No.128 of 2004 preferred against the rejection order was dismissed by order dated 29.6.2004.

The protest petition no.805 of 2004 was taken up and after inquiry under Section 202 Cr.P.C. cognizance was taken by the impugned order.

It is available in the records that complainant had applied for mutation of the aforesaid 2 kathas of land before the Circle Officer, Sadar, on 15.3.1996 and the name of the complainant was mutated on 31.3.1996. As such, it is crystal clear that the complainant had full knowledge and was aware of the fact as far back as 1996 that only 2 kathas of land had been purchased and mutated in her name. It is difficult to reconcile with her persuasive jargon of having been put in possession of 8 kathas of land and coming to know for the first time the fact that only 2 kathas had been purchased in her name only on 6.5.2000 when in fact she had applied and got mutated 2 kathas of land in her name as far back as 1996. Apparently, she has suppressed material facts and has not approached the court with clean hands and has filed the complaint, the petition under Section 173(viii) Cr.P.C., the revision before the Sessions Court and the Protest Petition with malafide intention and vexatious reasons.

Abusing the process of the court is a term generally applied to a proceeding which is wanting in bonafides and is frivolous,

vexatious or oppressive, which the instant canard of the complainant is. In such circumstances, the courts cannot sit as an idle spectator. The instant case is an appropriate situation where the power under Section 482 Cr.P.C. should be exercised to prevent an abject misuse of the process of the court.

Accordingly, the application is allowed and the impugned order taking cognizance is hereby quashed.

**(Abhijit Sinha,J)**

**Patna High Court, Patna.**

**Dated: The 28<sup>th</sup> day of May, 2009.**

**Pradeep Srivastava/A.F.R.**

