

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.55759 of 2015

Arising Out of PS.Case No. -9955 Year- 2014 Thana -MADHUBANI COMPLAINT CASE
District- MADHUBANI

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1. Dr. Rudra Nand Mishra, Son of Late Vachaspati Mishra
2. Rina Mishra, Wife of Dr. Rudra Nand Mishra
Both resident of Patliputra Medical College, P.S. Saraidhela,
District - Dhanbad

.... Petitioner/s

Versus

1. The State of Bihar
2. Manoj Kumar Jha, Son of Sri Ram Sunder Jha, resident of Mohalla -
Suratganj Ward No. 17, P.S. Town, District - Madhubani

.... Opposite Party/s

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Appearance :

For the Petitioner : Mr. Ajay Kumar Thakur, Advocate
Mr. Md.Imteyaz Ahmad, Advocate
Mr. Amit Kumar, Advocate
For the State : Mr. Surendra Kumar(APP)
For O.P. No.2 : Mr. Amalendu Shekhar Thakur, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

4 04-05-2016 Heard learned counsel for the petitioners and the

learned counsel appearing on behalf of the complainant (O.P.
No.2) as well as the learned counsel appearing on behalf of the
State.

The petitioners are apprehending their arrest in
connection with Complaint Case No.9955 of 2014 for allegedly
having committed the offence under Section 420 of the Indian
Penal Code.

Learned counsel for the petitioners submits that the
complainant has registered the present case alleging fraud on

the part of the petitioners for the reason that after they had accepted the consideration money for executing a sale deed for a property in which the complainant is residing, they failed to perform their part of the agreement.

Learned counsel for the petitioners submits that, admittedly, there was some agreement to sell for which some consideration money had also exchanged hands. However, the petitioners could not perform their part of agreement due to various reasons, which included that the brother of the petitioners wanted to purchase the property and being part of the family, it was obligatory on their part to consider the case of the complainant other than to selling the property to him. Learned counsel appearing on behalf of the petitioners further submits that whatever consideration amount had been accepted by them has been returned. Moreover, if the complainant so desired, the appropriate recourse available to him for implementation of the agreement was to move a court of appropriate jurisdiction by filing a suit for specific performance of contract. Instead, the complainant has chosen an oblique method for harassing the petitioners and subjecting them to criminal prosecution, though there is no criminality involved in the transaction between the parties.



Learned counsel appearing on behalf of the complainant has seriously contested the matter and submitted that though there was an agreement to sell, the petitioners did not perform their part of agreement. Moreover, they have also misappropriated a chunk of money, which was paid to them by way of consideration amount for the house in question. This fact has come on record as the complainant have retained certain C.Ds. of verbal conversations between the parties, which can well be produced to demonstrate the fraud committed by the petitioners. It is further submitted that the complainant has also sent legal notice to the petitioners in which the execution of the agreement was duly recorded therein.

Be that as it may, it appears that the entire prosecution has emanated from the agreement between the parties and only because the petitioners have now retracted from the said agreement, the element of fraud has been introduced and the allegations regarding non-return of the money has also been drawn in the present case. So far as the coversation and other material exhibits available with the complainant are concerned, they can be exhibited in the court below by adducing evidence thereat.

In view of the such facts and circumstances and also on account of the fact that the petitioners are having no criminal antecedents, let both the petitioners, above named, in the event of their arrest or surrender before the court below within a period of four weeks from the date of receipt/production of a copy of this order, be released on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Madhubani, in connection with Complaint Case No.9955 of 2014, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

It is made clear that the petitioners shall make themselves available as and when required in the court below and shall not abstain from the court for more than two dates without any valid and reasonable cause.

(Anjana Mishra, J)

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