

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13039 of 2013

Arising Out of PS.Case No. -77 Year- 2012 Thana -GIRIYAK District- - Nalanda, Biharsharif.

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1. Md. Ziyaul Haque
 2. Md. Sabirul Haque
 3. Md. Sagirul Haque
 4. Md. Rizwanul Haque

All 1 to 4 are sons of late Md. Allauddin Resident Of Village- Jalapur, P.S.-
Giriyak, District- Nalanda, at present r/o 12/1 Kastiya Road, Kolkata, 39

.... Petitioner/s

Versus

1. The State Of Bihar
2. Jaso Devi W/O Basudeo Yadav R/O Village- Manpur, P.S.- Griyak, District-
Nalanda

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Chandra, Adv.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 01-09-2015

Heard learned counsel for the Petitioners and the State.

The Petitioners seek quashing of the order of cognizance dated 17.1.2013 passed by the Chief Judicial Magistrate, Nalanda, in connection with Giriyak P.S. Case No. 77 of 2012 by the Chief Judicial Magistrate, Nalanda at Biharsharif.

The case of the Informant is that despite receipt of Rs.2,37,800/- the accused persons refused to execute a sale deed nor returned the money.

It has been submitted that the Petitioners have deposited the amount of Rs.1,79,800/- in the Court below which was received

by them as is evident from Annexure-2. It is under these circumstances, the Petitioner seeks quashing of the order.

On the other hand, the counsel for the Complainant submits that the amount deposited is much lesser than the claim by the Informant and, hence, the Petitioner should be put on Trial.

Even accepting the allegations in the First Information Report, in the opinion of this Court, at best a case for proceeding under the provisions of Specific Performance Act is made out.

Hence, the application is allowed and the Proceeding including the order of cognizance dated 17.1.2013 passed by the Chief Judicial Magistrate, Nalanda, in connection with Giriyak P.S. Case No. 77 of 2012, is hereby set aside.

The Informant will be at liberty to withdraw the amount deposited by the Petitioners in the Court below.

(Anjana Prakash, J)

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