

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37772 of 2012

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1. Mahadev Prasad Sinha @ Mahadev Prasad Singh S/O Late Raushan Sinha.
2. Jaymati Devi W/O Sri Mahadev Prasad Sinha.
3. Narendra Prasad Sinha @ Narendra Kumar Singh S/O Sri Mahadev Prasad Sinha
All Residents Of Village Bela, P.O. Lahauna, P.S. Punpun, District Patna.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Devendra Kumar Singh S/O Late Subedar Singh, Resident Of Mohalla Opposite Rajapur Mainpura Murti South Lane, P.S. Patliputra, District Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar Mishra

For the Opposite Party/s : Mr. Rajendra Nath Jha(App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

3 09-04-2015 Heard the learned counsel, Mr. Sudama Singh on behalf of the petitioners. Notices were issued on the opposite party No.2 in admission matter but in spite of service, nobody appeared. Heard the learned A.P.P. on behalf of the State of Bihar.

This application under Section 482 Cr.P.C. has been filed by the petitioners for quashing the order dated 16.11.2011 passed by the learned Judicial Magistrate, 1st Class, Patna in complaint case No.2901(c) of 2011 whereby the court below has taken cognizance under Section 406 and 420 I.P.C.



It appears that the complaint case was filed by the opposite party No.2 against the petitioners alleging that the petitioners were in need of money, therefore, they entered into agreement with the complainant to sell the property in favour of the complainant. The consideration amount was fixed at Rs.12,68,000. At the time of execution of the agreement, earnest money of Rs.2 lacs was paid and subsequently, amounts were paid total being Rs.5,50,000. The sale deed was to be executed within six months but in spite of repeated demand, the petitioners avoided to execute the sale deed with intention to grab the amount paid by the complainant.

The learned counsel for the petitioners submitted that this dispute between the parties is pure civil dispute and for that, the complainant-opposite party No.2 has filed a suit for specific performance of contract being title suit No.427 of 2012 which is pending in the Court of Sub Judge I, Patna. The complainant with intention to pressurize the petitioners has made averments only to foist criminal liability on the petitioners by converting a purely civil dispute into criminal act alleged to have been committed by the petitioners. The complainant himself never paid the balance consideration amount to the petitioners, therefore, there is no question of executing any sale deed in favour of the complainant



arises. According to the learned counsel, the time fixed for performance i.e. payment of balance consideration amount itself shows the nature of urgency required by the petitioners. Because of non-payment of the balance consideration amount the petitioners arranged the amount and anyhow they got the open heart surgery of petitioner No.1. Therefore, the dispute raised by the petitioners is nothing but pure civil dispute and if the criminal case is allowed to stand, it will amount to abuse of process of the Court.

As stated above, in spite of notice, the opposite party No.2 has not appeared. From the averments made in the complaint application which has been annexed as Annexure 1 to this criminal miscellaneous application, it appears that the allegation made by the opposite party No.2 is to the effect that an agreement was entered into between the parties and the consideration amount was fixed at Rs.12,68,000 and the sale deed was to be executed within six months from the date of agreement after payment of balance consideration amount by the complainant to the petitioners. The plaint of title suit No.427 of 2012 has been annexed as Annexure 6 to this criminal miscellaneous application. The same averment is there in the plaint. Now, therefore, in view of the above facts alleged by the complainant i.e. the dispute

between the complainant and the petitioners is purely civil in nature.

The Hon'ble Supreme Court in the case of **Rashmi Jain v. State of Uttar Pradesh & Anr., (2014) 13 Supreme Court Cases 553** has held that the High Court has committed jurisdictional error in dismissing the criminal petition filed by the appellant on the ground that it involved disputed questions of fact which can only be gone into by the trial court. The fact that the dispute involved between the parties is purely civil in nature and has in fact, been admitted in the counter-affidavit filed on behalf of the respondent No.2. Clearly it is evident that the utterances which are attributed to the appellant have been inserted in the complaint with a malicious intent to convert a purely civil dispute into a criminal offence. In that case, it appears that the High Court refused to quash the proceeding on the ground that it involves disputed questions of fact. Notices were issued to complainant who filed counter-affidavit admitting the case that a civil dispute is there between the parties. In the present case, no doubt after notice, O.P. No.2 has not appeared but from the averment made in the complaint case itself, it is clear that the case is of pure civil nature and in fact, the O.P. No.2 has filed a suit for specific performance of contract.

It is settled principles of law that object of Section 482 Cr.P.C. is to prevent abuse of process of Court and to secure ends of justice. High Court while exercising jurisdiction under Section 482 Cr.P.C. need to be circumspect and exercise power in exceptional circumstances depending upon facts of each case but at the same time, frustrated litigant need not be permitted to vent vindictiveness through abuse of process of law and such proceedings are required to be stopped in earlier stages. Reference may be made in this matter to the case of **Rishipal Singh v. State of Uttar Pradesh and another, (2014) 7 Supreme Court Cases 215.**

In view of the above settled principles of law laid down by the Supreme Court, in my opinion, if the criminal proceeding and the order taking cognizance is allowed to stand, it will nothing but abuse of the process of the Court. I, therefore, quash the order taking cognizance and the proceedings in complaint case No.2901(c) of 2011 pending in the Court of Judicial Magistrate, 1st Class, Patna, Smt. Gayatri Kumari.

Accordingly, this criminal miscellaneous application stands allowed.

(Mungeshwar Sahoo, J)

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