

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 33136 of 2013

Arising out of P.S. Case No. -102 Year- 2012 Thana -
SAHARSA District- SAHARSA

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1. Prof. Sheo Kumar Mishra S/o Late Ram Autar Mishra Resident of Ashirward Colony, Ashiana Nagar, Ashina Nagar, Patna- 25.
 2. Smt. Usha Kiran Mishra W/o Proff. Sheo Kumar Mishra Resident of Ashirward Colony, Ashiana Nagar, Ashina Nagar, Patna- 25.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Anirudha Gupta S/o Sheo Nandan Gupta Gandhi Path, Ward No. 08, P.O And P.S- Saharsa, District- Saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. G.M. Thakur, Adv.

For the Opposite Party/s : Mr. R.K. Singh, APP.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 09-04-2015

Supplementary-Affidavit filed today on behalf of the Petitioner stating therein that charges till date have not been framed be kept on record.

The Petitioners seek quashing of the order of cognizance dated 23.03.2013 passed by the Chief Judicial Magistrate, Saharsa in Saharsa Sadar P.S. Case No. 102 of 2012 arising out of Complaint Case No. 1466 of 2011.

The case of the Complainant is that the parties had agreed that a certain piece of land be sold pursuant to which the Petitioners received a certain amount of money but they did not execute the sale deed. Initially, a First Information Report was instituted which ended in a final report.

The submission of the Petitioners is that even conceding the allegations in the Complaint Petition no

criminal offence is made out and the best course to the Complainant's would have been to file a suit for specific performance which he has already done. The Complainant has also filed a money suit for recovery of amount so handed over to the Petitioners.

On the other hand, Counsel for the Complainant submits that since the Petitioners had agreed to sell the land and had received the money they should be prosecuted criminally as well.

Having considered the facts of the Complaint case, I would be inclined to hold that continuance of the present criminal complaint is superfluous in nature as also it appears to have been instituted as a short cut method to ensure return of the money.

Hence, the proceeding as against the Petitioners including the order of cognizance dated 23.03.2013 passed by the Chief Judicial Magistrate, Saharsa in Saharsa Sadar P.S. Case No. 102 of 2012 arising out of Complaint Case No. 1466 of 2011 is, hereby, set aside.

The Application stands allowed.

However, the quashment of the present proceeding shall have no bearing on any other proceeding.

Vikash/-

(Anjana Prakash, J.)

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