

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12732 of 2013

Arising Out of PS.Case No. -2241 Year- 2008 Thana -WEST CHAMPARAN COMPLAINT
District- -

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Madan Dwivedi S/O Late Gaya Dwivedi, resident of Village Shivrajpur,
P.S. Nautan, District West Champaran.

.... Petitioner

Versus

1. The State of Bihar.
2. Lakshman Yadav S/O Late Bari Yadav, resident of Village Shivrajpur,
P.S. Nautan, District West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner : Mr. Bimlesh Kumar Pandit, Advocate.
For the Opposite Party/s : APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL ORDER

4 25-06-2015

Heard learned counsel for the petitioner and learned

A.P.P. for the State.

2. The present petition has been filed for quashing the cognizance order dated 14.05.2012 passed by Sri Ashutosh Rai, learned Judicial Magistrate, Ist Class, Bettiah, West Champaran in connection with Complaint Case No. 2241C of 2008, Tr. No. 2083 of 2012 for the offences alleged under Sections 406, 417 of the Indian Penal Code.

3. According to the prosecution case, the petitioner negotiated for purchase of 1 Katha land appertaining to Plot No. 293, Khata No. 179 for a consideration of Rs. 64,500/- from the opposite party no. 2 and in spite of the assurance that the amount would be paid by him after registration of the sale deed, the said amount was not paid. It has further been alleged that the petitioner

had fraudulently managed registration of 2 Kathas of land which included some portion of the land belonging to the brother of opposite party no. 2 Narayan Yadav.

4. It is submitted that the complaint case against the petitioner is frivolous and vexatious. It is not in dispute that the purchase of land has been effected through registered sale deed dated 04.06.2008 as contained in Annexure-2 which has been duly executed by the opposite party no. 2 on receipt of the consideration amount of Rs. 64,500/- relating to the 2 Kathas of land conveyed in favour of the petitioner. It is submitted that in view of the acknowledgement of receipt of the entire consideration amount by the opposite party no. 2 as recorded in the sale deed, the opposite party no. 2 cannot deny having received such payment, and that too after a lapse of over two months after registration of the sale deed, by filing the instant complaint case. According to the petitioner, the only course open to the opposite party no. 2 with regard to the allegation of fraudulent transfer of 2 kathas of land in favour of the petitioner was by way of approaching a Civil Court of competent jurisdiction by filing a suit which does not appear to have been done. It is further pointed out that notice issued by this Court has been refused to be received by the opposite party no. 2 which clearly suggests that the complaint has been filed by him only to harass the petitioner. Learned

counsel for the petitioner relies on a decision of this Court reported in 2007 (2) PLJR 331 (Brahmdeo Ram and Ors. vs. The State of Bihar & Anr.).

5. As stated above, notice issued by this Court has been refused to be received by the opposite party no. 2 and none is present on his behalf when the matter is called out today.

6. This Court finds force in the submissions of the learned counsel for the petitioner which merit acceptance. The 2 Kathas of land in question have duly been transferred under a registered sale deed which has been executed by the opposite party no. 2 and there is acknowledgement of having been received the full consideration amount of Rs. 64,500/- at the time of execution of the sale deed. Any grievance arising with regard to the same would fall within the domain of civil litigation and this Court is of the view that continuance of criminal prosecution against the petitioner in the present facts and circumstances of the case would amount to abuse of process of Court.

7. In the interest of justice, therefore, the order of cognizance dated 14.05.2012 is hereby quashed. The petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/-

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