

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32094 of 2012

Arising Out of Complaint Case No. -3154 Year- 2011 District- PATNA

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1. Bhola Prasad Keshri, S/O Late Ram Chandra Prasad, R/O New Atwarpur, Lalu Path, P.S. Parsa Bazar, District - Patna
 2. Sanjay Kumar, S/O Sri Bhola Prasad Kesri, R/O New Atwarpur, Lalu Path, P.S. Parsa Bazar, District - Patna
 3. Pankaj Kumar, S/O Sri Bhola Prasad Kesri, R/O New Atwarpur, Lalu Path, P.S. Parsa Bazar, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sri Krishna Kumar Keshri, S/O Late Ganga Prasad, R/O Village - Beur, P.S. Phulwarisarif, District - Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ray Kumar Mishra, Adv.

For the State : Mr. Nazir Ansari, A.P.P.

For the Opposite Party No. 2 : Mr. Akhauri Kamal Kishore Sahay, Adv.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 27-03-2015

Heard learned counsel for the Petitioners and the State.

The Petitioners seek quashing of the order of cognizance dated 13.2.2012 passed by the Judicial Magistrate, 1st Class, Sadar, Patna, in Complaint Case No. 3154 (C) of 2011 under Sections 406, 323/34 of the Indian Penal Code.

The case of the Complainant is that he had executed an agreement with Petitioner No. 1 for purchasing a piece of land who had paid a sum of Rs.51,000/- as earnest money. Later on, the accused person refused to execute the sale deed and when he demanded his

money back, he was assaulted by the accused persons.

It has been submitted on behalf of the Petitioners that evidently as stated in the Complaint petition, the agreement was between Petitioner No. 1 who had been entrusted with certain amount of money and not the Petitioners No. 2 and 3. Petitioner No. 1 is now dead and, hence, the allegation so far as he is concerned, does not survive. Moreover, for the same cause of action, a Title Suit No.826 of 2011 had been filed by the Complainant in which Petitioner No. 1 had appeared. The Complainant also filed Jakkanpur P.S. Case No. 33 of 2012 for a Proceeding under Section 107 Indian Penal Code before the S.D.O. Court, Patna. It appears that the Petitioner No. 2 had filed Informatory petition on 16.11.2011 that an agreement had been forcibly made by the Complainant and they also filed a Complaint Case No. 3313 of 2011 before the Chief Judicial Magistrate, Patna, in which cognizance under Section 323 Indian Penal Code has been taken. It is in this background, the Petitioner seeks quashing of the Prosecution.

On the other hand, the counsel for the Complainant submits that the case has been fixed for evidence and, therefore, this Court should not interfere in the matter.

Having gone through the background facts of the case, I would be inclined to hold that the present Complaint when the

Petitioner No. 1 is dead is meaningless as against Petitioners No. 2 and 3 and deserves to be set aside.

Hence, the application is allowed and the order of cognizance dated 13.2.2012 passed by the Judicial Magistrate, 1st Class, Sadar, Patna, in Complaint Case No. 3154 (C) of 2011 is hereby set aside.

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

(Anjana Prakash, J)

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