

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28415 of 2012

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1. Upendra Kumar Sharma S/O Luxuman Sharma Village Shri Nagar, P.S.
Siwan Mufassil, District - Siwan

2. Anil Prakash Sinha S/O Late Nagendra Kumar Sinha Village Shri Nagar,
P.S. Siwan Mufassil, District - Siwan

.... Petitioner/s

Versus

1. State Of Bihar

2. Ajeet Kumar son of late Shokhdeo Yadav, r/o village Pachaura, P.S.
Siwan, Muffasil, District Siwan,

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chandra Kant

For the Opposite Party/s Mr. Brajendra Nath Pandey(App

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 20-02-2015 This is an application seeking quashing of the order dated 11.8.2011 passed by the learned Judicial Magistrate Ist Class, Siwan in Complaint case No. 1508 of 2011 whereby, he has taken cognizance of the offence punishable under Sections 418 and 406/34 of the Indian Penal Code and has issued summons to the accused persons.

Referring to the accusations made in the complaint petition, learned counsel for the petitioners has submitted that even if the statements made in the complaint petition are taken to be true, no offence under any provisions of the Indian Penal Code is made out. He has further submitted that the story as narrated in the complaint petition shows that purely a civil dispute is being

pursued in a criminal case.

As per the prosecution case, as narrated in the complaint petition, accused no.1 is said to have approached the complainant for sale of certain land which belonged to accused No.1. The complainant is said to have paid a sum of Rs. 1,30,000/- with an assurance that he will be paying rest of the amount shortly. In the meanwhile, the petitioners are said to have purchased the land from accused no.1 on 27.6.2011.

With the allegation that accused No.1 misappropriated the amount which he had taken from the complainant and sold the land belonging to him to the petitioners, the complainant filed the present complaint case.

Learned counsel for the petitioners has further submitted that a Title Suit No. 165 of 2012 had already been filed by the complainant for specific performance of contract for sale of the said land in his favour.

Learned counsel for the petitioners has also relied upon following judgments of this Court:-

- i. “2006(4) BBCJ 116
- ii. 2011 (4) BBCJ 415
- iii. 2007(4) BBCJ 61
- iv. 2012(4) PLJR 59

v. 2007(1) BBCJ 173

vi. 2011 (1) PLJR 568.”

I find substance in the submissions made on behalf of the petitioners that on the basis of the averments made in the complaint petition no offence is made out and the dispute is purely civil in nature the order taking cognizance dated 11.8.2011 passed by learned Judicial Magistrate Ist Class, Siowan in Complaint case No. 1508 of 2011 is quashed.

This application is allowed.

(Chakradhari Sharan Singh, J)

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