

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49674 of 2008

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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1. Madhuri Prasad wife of Shambhu Nath Prasad.
 2. Shambhunath Prasad son of late Jokhan Ram.

.... Petitioner/s

Versus

1. State of Bihar.
2. Rajendra Prasad son of Bashu Saw

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

Mr. S.R.Sharan

Mr. Prabhat Kumar Sharan

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 03-07-2015

No one appears on behalf of the petitioners on repeated dates.

The petitioners seek quashing of the order of non-discharge dated 11.11.2008 passed by the Judicial Magistrate, Patna in Complaint Case No. 2194J of 2007 by which he has refused to discharge the petitioners.

The case of the complainant is that even after having transacted for a certain piece of land and receipt of money in lieu thereof, the accused persons refused to execute the sale deed.

It has been submitted on behalf of the petitioners that it is evident from the petition filed herein that the agreement between the complainant and the accused persons was for payment of Rs. 5,33,407/- within five months but the complainant did not pay in time.

If at all the complainant was aggrieved he should have filed a suit for specific performance.

On the other hand counsel for the complainant submits that from inception of the transaction the petitioners had intention to cheat and hence they should be put on trial.

Having considered the nature of allegation I would be inclined to accepted the submission that at best a civil dispute is made out in the facts fo the case. Hence the application is allowed and the order of non-discharge dated 11.11.2008 passed by the Judicial Magistrate Patna in Complaint Case No. 2194J of 2007 is hereby set aside.

However, this order shall not prejudice any party.

(Anjana Prakash, J)

Prakash/-

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