

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.875 of 2014

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Shekhar Kumar Singh

.... Petitioner

Versus

1. The State of Bihar
 2. The Director General of Police, Bihar, Patna
 3. The Deputy Inspector of General of Police, Purnea
 4. The Superintendent of Police, Purnea
 5. The Superintendent of Police, Sadar, Purnea
 6. The Officer-in-Charge, K. Hat Police Station, Purnea
 7. The Kishan Lal Das, son of Phaguni Das, resident of mohalla Tatma Toli, P.S. K. Hat (Sahayak) district Purnea
- Respondents
- =====

Appearance :

For the Petitioner : Mr. Ajit Ranjan Kumar, Adv.

For Respondents 1 to 6 : Mr. Shashi Shekhar Prasad Sinha
AC to GA XIII

For Respondent 7 : Mr. Ram Pravesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

4 08-07-2015

Heard the learned counsel for the petitioner and the State.

This is a petition for quashing the first information report of K. Hat (Sahayak) P.S. Case No. 311 of 2014 for offence under Sections 328, 420, 406, 467, 468, 471 and 120B of the Penal Code.

The first information report has been lodged on a complaint case bearing no. 1082 of 2014 which was sent for lodging the first information report under Section 156(3) of the Criminal Procedure Code and then the police case has been recorded as K. Hat (Sahayak) P.S. Case No. 311 of 2014 alleging thereof four persons, Md. Habib, Md. Sadrul Hoda, Md. Nurul Hoda, Md. Shamsu Zoha, gave power of attorney to the petitioner for selling

his land of khata no. 429, plot no. 704, 699, thana no. 238, ward no. 20/21, tauzi no. 8/5, situated in Mauza Maharajganj Area with regard to total area of 9 bigha and 14 katha. The petitioner shows the land to the complainant, respondent no. 7, and there was agreement entered into between the parties for the sale of 31 decimals 5 kari of land of khata no. 429, plot no. 704, 699, thana no. 238, ward no. 20/21, tauzi no. 8/5, situated in Mauza Maharajganj Area totaling about 15 katha of land at the rate of rupees one lakh per katha. Further, case is that Rs.6,35,000/- was given in advance and an agreement to sell was executed and as per the terms of agreement that within one year from 27.08.2009 the complainant shall pay the rest amount, Rs.8,65,000/-, i.e., the remain amount shall be made by 27.08.2010 as per the agreement and get the sale deed executed under registered deed. However, the further case is that the complainant on 04.07.2010 arranged Rs.8,65,000/- and went to the house of the petitioner and informed him that the money has been arranged and within a time limit take money and get the land registered. The further case is that the petitioner did not go to meet the complainant on 01.08.2010 then the complainant along with the witnesses went to the house of the accused and requested to take the money and register the land. However, the



petitioner evaded and assured that within a time limit the land will be registered and whenever the complainant used to go to meet to execute the sale deed and registered deed within the time limit, the petitioner used to refuse. It is further alleged that between August, 2010, and October, 2011 the accused persons several times attempted to go to the house of the petitioner and tried to meet him, but, the petitioner did not meet. It is, further, alleged that the petitioner assured the complainant that he will register the land to the complainant provided the complainant give in writing that he will pay Rs.8,65,000/-, the rest of the consideration amount, to the petitioner by 25.10.2011 and the complainant gave in writing that he will pay Rs.8,65,000/- by 25.10.2011 and ultimately the complainant constantly last the time on 29.03.2014 went to the house of the accused with a request to get the land register and ultimately on 31.03.2014 a Panchayati was made, but, the petitioner refused to execute the deed and opposed and it is alleged that he took the amount to the extent of Rs.8,65,000/-.

The learned counsel for the petitioner, however, submits that even the allegation made in the complaint, taken in the face value, it does not make out an offence and the matter concerned with a civil dispute with regard to the breach of agreement.



However, going into the entire allegation it is apparent that there was a contract for sale and as per the contract Rs.6,35,000/- was paid and Rs.8,65,000/- was agreed to be paid on 27.08.2010 and as per the agreement the entire money was required to be paid on 27.08.2010. However, as per the allegation, it is apparent that the money was not paid up to 27.08.2010 and agreement has lost its value. However, it is again agreed to pay the amount by 25.10.2011. However, as per the allegation it is the complainant himself who has breached the agreement as he did not pay the amount and if the money was not paid as per the agreement it was required to file a civil suit for specific performance of contract, but, instead of filing a suit for specific performance of contract and criminal complaint is filed. However, when the matter concerned with a contract between the parties and if there is breach of contract and the money has not been paid it is out and out a civil dispute for breach of contract as time was the essence of contract has no concern. Hence, having regard to the allegation even accepted at the face value, no offence is made out. If first information report does not make out a cognizable offence, then, police has neither jurisdiction to lodge a case nor has a statutory right to investigate.

Hence, having regard to the facts that the

allegation made in the first information report does not make out a cognizance offence, the police has no jurisdiction to lodge first information report or investigate the case. Hence, the first information report is **quashed** and the writ petition is **allowed**.

(Gopal Prasad, J)

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