

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.8563 of 2009

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

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1. Narendra Pd. Singh, son of Sri Dev Prasad Singh, &
 2. Darshana Singh, wife of Narendra Singh, both resident of village-Korari Chak, P.S.-Phulwarisharif, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar &
2. Mahesh Singh, son of late Rajeshwar Singh, resident of village- Bela, P.S.- Bihta, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : None

For the Opposite Party/s : APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 10-07-2015

1. No one appears on behalf of the either party.
2. The Petitioners seek quashing of the order of non-discharge dated 02.02.2009 passed by the Judicial Magistrate, 1st class, Danapur, in Complaint Case No.835-C of 2003.
3. The case of the Complainant is that he had negotiated for sale of 3 acres and 19 decimals of land with the Petitioners which they had agreed to purchase and make payment within one year. The Petitioners paid ₹50,000/- as advance whereafter agreement for sale was executed on 01.06.2002. After executing the agreement, when the Petitioners did not pay any money to the Complainant, he went to their residence but he was assured that they would complete the formalities within a reasonable time. On the date of occurrence, the accused persons handed over nine post dated

cheques of ₹50,000/- each which were dishonoured. The Petitioners thereafter contacted the Complainant on 10.06.2003 and asked him to execute a Power of Attorney in their favour since they had given him post dated cheques for purchase of the land. Thereafter, the Complainant executed a Power of Attorney in Hazaribagh Registry Office on 11.06.2003. When the Complainant produced the cheques, in question, they were dishonoured and hence, he was cheated of substantial amount of money.

4. Stand of the Petitioners is that, indeed, there was an agreement for sale and the Petitioners had paid altogether ₹2,70,000/- to the Complainant and after receiving the said amount the Complainant had executed Power of Attorney in favour of the Petitioner No.1. However, due to financial constraint the Petitioners could not pay full consideration amount to the Complainant within the stipulated period on account of which he filed the Complaint Case against the Petitioners even though the Petitioners had given reply to his legal notice. The Complainant then signed a **Panchnama** with the Petitioner Nos.1 and 2 on 23.09.2004 in presence of many witnesses as per which the Complainant had to execute a Sale Deed in favour of the Petitioner No.2 for 2 Bighas of land in lieu of ₹2,70,000/- paid by the Petitioners to the Complainant. It was also agreed that the Complainant would be given ₹21,000/- as cost of litigation and after debiting the price of

two Bighas of land and ₹21,000/- , the Complainant would refund the rest of the amount to the Petitioners. However, the Complainant never executed any Sale Deed nor did he refund the amount of ₹37,500/-. In the meanwhile, the Complainant died on 25.01.2008 after which his son filed a Petition in the Court below for substitution.

5. Submission of the Petitioners is that prosecution of the Petitioners under the provision of Negotiable Instrument Act is time barred and the ***Panchnama*** which was executed between the parties falsifies the claim of the Complainant.

6. Be that as it may, in view of nature of dispute, the order of non-discharge dated 02.02.2009 passed by the Judicial Magistrate, 1st class, Danapur, in Complaint Case No.835-C of 2003, is hereby set aside.

7. The application stands allowed.

8. However, this order shall not prejudice any party in any manner.

JA/-

(Anjana Prakash, J)

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