

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 38015 of 2014

Arising Out of PS.Case No. -378 Year- 2005 Thana -Bhagalpur Kotwali District- Bhagalpur

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Badri Ram Marwari @ Badri Prasad Tebriwal S/o Budhu Ram Marwari Resident of
Village- Sangrampur, P.S.- Sangrampur, District- Munger.

.... Petitioner/s

Versus

1. The State of Bihar
2. Om Prakash Sharma S/o Sri Shyam Sundar Prasad Sharma, Resident of Mohalla-
Gurudwara Road, P.S- Kotwali, District- Bhagalpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 08-10-2015

The petitioners seek quashing of the order of none discharge dated 30.08.2013/16.09.2013 in G.R. No. 1425 of 2005 arising out of Kotwali P.S. Case No. 378 of 2005 by the Judicial Magistrate 1st Class, Bhagalpur.

The case of the informant is that there was a transaction between the petitioner and himself with regard to sale of certain piece of land. However, even after the agreement and receipt of money, the petitioner did not execute the sale deed. Later on he learnt that a partition suit with respect to the same land was going on before the Sub-Judge 1, Bhagalpur. He then instituted the first information report stating therein that he had been cheated in the transaction.

It has been submitted on behalf of the petitioner that he had

never executed any document with regard to sale of land and since the informant has already approached the Civil Court in suit for specific performance of contract, the present first information report is an abuse of the process of the Court.

Counsel for the informant submits that since the petitioner has cheated him he should be put on trial.

Having gone through the facts of the case, I find that the element of cheating at the very inception is absent. Hence the application is allowed without prejudice to the rights of the parties and the order of none discharge dated 30.08.2013/16.09.2013 in G.R. No. 1425 of 2005 arising out of Kotwali P.S. Case No. 378 of 2005 by the Judicial Magistrate 1st Class, Bhagalpur, is hereby set aside.

(Anjana Prakash, J)

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