

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.117 of 2015

Arising Out of PS.Case No. -115 Year- 2012 Thana -PIRBAHOR District- PATNA

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Amarendra Kumar Sinha, son of Shri Shiveshwar Prasad Sinha, resident of
Mohalla- Khazanchi Road, P.S.- Pirbahore, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Smt. Krishna Sinha, wife of Sri Amitabh Sinha, resident of 205 Purendu
Apartment, Bhikhna Pahari, P.S.- Pirbahore, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Akhileshwar Prasad Singh, Sr. Adv. Mr. Anirban Kundu, Adv. Mr. Bimal Kumar No.2, Adv. Mr. Abhishek Anand, Adv.
For the State	:	Mr. Mr. Satyendra Prasad, APP
For Opposite Party No.2:	:	Mr. Nazir Alam, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 26-11-2015

Heard Mr. Akhileshwar Prasad Singh, learned Senior
Counsel for the petitioner, Mr. Satyendra Prasad, learned Additional
Public Prosecutor for the State and Mr. Nazir Alam, learned Counsel
for the Opposite Party No.2.

2. In the present application filed under Section 482 of the
Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioner seeks
quashing of the order dated 21.02.2014 passed by the learned Judicial
Magistrate 1st Class, Patna in Pirbahore P.S.Case No. 115 of 2012. By
the impugned order, the learned Judicial Magistrate took cognizance

of the offences punishable under Sections 406 and 420 of the Indian Penal Code (for short 'IPC') and summoned the petitioner to face trial.

3. The Opposite Party No.2 is the owner of a piece of land situated at Bhikhna Pahari P.S.- Pirbahore, District- Patna bearing Plots No. 1409 and 1410, Circle No. 36(old), Holding No. 92/55, Ward No. 37 (Old) measuring an area of 4.16 katha in respect of which she had entered into a development agreement with the petitioner on 14.08.2007.

4. The petitioner is the proprietor of the firm M/s Shreya Construction. The allegations made in the FIR relate to breach of the terms of the development agreement. According to the written report, as per terms of the development agreement, the petitioner was required to construct an apartment over the plot in question latest by 06.08.2011 and hand over possession of fully furnished seven flats and six spaces for car parking after obtaining electricity connection from the Bihar State Electricity Board and completion certificate from the Municipal Corporation to the Opposite Party No.2 and only thereafter, he could have sold the flats of his share to the other purchasers, but violating the terms of the agreement, the petitioner sold flats and handed over the possession of his share of flats to the purchasers even before completing construction of flats falling within

the share of the Opposite Party No.2. It has further been alleged that the petitioner illegally provided electricity connection to the different purchasers of flats of his share. The petitioner is also alleged to have threatened the Opposite Party No.2 and her husband of dire consequences of their life and property.

5. The Investigating Officer investigated the case and found the allegations to be true under Sections 406 and 420 IPC. Accordingly, charge-sheet was submitted against the petitioner. After taking into consideration the allegations made in the FIR and the materials collected in course of investigation, the jurisdictional Magistrate took cognizance of the offences punishable under Sections 406 and 420 IPC and summoned the petitioner to face trial vide order dated 21.02.2014. The said order dated 21.02.2014 is under challenge before this Court in the present proceeding.

6. Mr. Akhileshwar Prasad Singh, learned Senior Counsel appearing for the petitioner has submitted that the possession of seven flats and six car parking spaces have already been handed over to the Opposite Party No.2 on 22nd March, 2014. He has submitted that steps have been taken to furnish the flats to the satisfaction of the Opposite Party No.2. The petitioner has also taken steps for ensuring electricity connection to the seven flats falling within the share of the Opposite Party No.2. He has further contended that the allegations

made in the FIR, even if given face value or taken to be correct on its entirety, do not constitute any offence punishable under Sections 406 and 420 IPC.

7. Per contra, Mr. Nazir Alam, learned counsel appearing for the Opposite Party No.2 has submitted that the allegations made in the FIR do attract the ingredients of the offences punishable under Sections 406 and 420 IPC. The allegations made in the FIR were found to be true by the Investigating Officer during investigation of the case and, therefore, on completion of investigation, charge-sheet has been submitted against the petitioner pursuant to which cognizance has been taken by the learned Magistrate. He has further contended that the Opposite Party No.2 was not given possession of her flats and parking spaces within the stipulated period mentioned in the agreement. Though he accepts that on 22.03.2014 the petitioner gave possession of seven flats, the finishing works like painting of doors and windows were not done and grills were not fitted in the guard room and bathroom. He has contended that so far as car parking spaces are concerned, the Opposite Party No.2 has been given only six car parking spaces out of seven car parking spaces as agreed between the parties.

8. I have heard learned Counsel for the parties and perused the record.

9. It would appear from a bare perusal of the written report on the basis of which the FIR has been instituted that according to the agreement the petitioner was required to hand over possession of seven flats and six car parking spaces to the Opposite Party No.2 and hence the contention advanced by the learned counsel for the Opposite Party No.2 that the Opposite Party No.2 has been given only six car parking spaces out of seven is misconceived.

10. So far as the delay in completion of the flats is concerned, in my opinion, the same would not attract the ingredients of any offence punishable under Sections 406 or 420 IPC. Even the delay caused in handing over the possession of the flats and car parking spaces would not constitute any offence punishable under the Penal Code. These disputes are essentially a civil dispute between the land owner and the builder regarding breach of terms of agreement.

11. It is well settled that to hold a person guilty of the offence of cheating punishable under Section 420 IPC, it has to be seen that the intention of the accused was dishonest at the time of making the promise and such a dishonest intention cannot be inferred from a mere fact that the accused could not fulfill the promise within the time agreed upon between the parties. There is also no allegation to justify the prosecution of the petitioner for the offence of criminal breach of trust.

12. In that view of the matter, I am of the considered opinion that the admitted facts of the case do not give rise to any criminal liability against the petitioner. Accordingly, the impugned order dated 21.02.2014, passed by the learned Judicial Magistrate 1st Class, Patna, in Pirbahore P.S.Case No. 115 of 2012, is hereby quashed. The application stands allowed.

(Ashwani Kumar Singh, J)

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