

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45993 of 2012

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1. Sahdeo Mandal S/O Late Gudrii Mandal R/O Topkhana Bazar Katghar,
P.S. Kotwali, District - Munger

.... Petitioner/s

Versus

1. The State Of Bihar
2. Gyan Shankar Poddar S/O Late Baleshwar Poddar R/O Mohalla -
Chuwabag, P.S. Kasim Bazar, District - Munger

.... Opposite Party/s

Appearance :

For the Petitioner : Mr. Dinesh Kr.Gupta and D.N.Jha, Advocates
For the Opposite Parties : Mr. Amrit Abhijat, Advocate
Mr.APP

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH**
ORAL ORDER

6 08-05-2015 The petitioner is aggrieved by order dated

23.4.2012, passed by the Judicial Magistrate, 1st class, Munger in
Complaint case no. 1239C of 2008 by which while rejecting his
discharge petition dated 8.12.2011, the Magistrate observed that
there sufficient material to frame charge against him under
sections 420 and 506 of the IPC.

The complainant, who is opposite party no.2 in the
instant petition, alleges that the petitioner with intention to cheat
induced him to part a sum of Rs.1,00,000/- for sale of a piece of
land which did not belong to him. The learned Magistrate while
rejecting the discharge petition observed that three witnesses
examined on behalf of the prosecution supported the allegations

made by opposite party no.2.

The petitioner submits that the land in question belongs to him and further more whether the land belongs to him or not, would be a civil dispute and the opposite party has already filed a Money Suit. He submits that non-refund of advance money would only amount to breach of contract for which appropriate remedy would be a civil suit. In support of his submission, the petitioner has relied upon a decision in the case of Dalip Kaur and others v. Jagnar Singh and another, reported in (2009)14 Supreme Court Cases 696.

Learned counsel for opposite party no.2 states that the petitioner dishonestly induced him to part with a sum of Rs.1 lac knowing fully well that there was no owner of the plot. He further submits that if there is a material to show that the delinquent has intention to cheat, the criminal liability would also be created. In support of his submission, he has placed reliance upon a decision in the case of N.Devindrappa v. the State of Karnataka, reported in (2007) 5 Supreme Court cases 228.

I find that the learned trial court has found prima facie case to be under sections 420 and 506 of the Indian Penal Code. I do not find any reason to interfere with the order

rejecting the application of the petitioner for discharge under Section 420 of the Indian Penal Code. So far as section 506 of the Indian Penal Code is concerned, I find that the materials produced are too general in nature to attract offence under section 506 of the Indian Penal Code which is accordingly quashed.

In the result, this application is partly allowed. The trial court would proceed with the case only under Section 420 of the Indian Penal Code.

(Samarendra Pratap Singh, J)

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