

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.16968 of 2010**

Arising Out of PS.Case No.81 Year- 2009 Thana -null District- KATIHAR

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1. S.K.Refan Ali @ Irfan Ali S/O Late Mohammad Mandal  
2. Bibi Jamila Khatoon W/O Sk Refan Ali @ Irfan Ali, both R/O Vill.-Hazipur,  
P.S.-Katihar, Dist.-Katihar.

.... .... Petitioner/s

Versus

1. The State Of Bihar  
2. Dr. Manoj Kumar S/O Late B.Choudhary At Present Residing At Sunil Hotel  
Mirchaibari, P.S.-Katihar, Dist.-Katihar.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Rajendra Narayan, Senior Advocate  
Mr. Pawan Kumar Singh, Advocate  
For the State : Mr. Braj Kishore Pd., APP  
For Opposite Party No.2 : Mr. Jibendra Mishra, Advocate

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**CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH**

**ORAL JUDGMENT**

**Date: 09-10-2015**

The Petitioners seek quashing of the order of cognizance dated 7.4.2009 passed by the court of Sri Vipul Sinha, J.M., 1<sup>st</sup> class, Katihar in Complaint case No.81 of 2009.

The case of the Complainant is that the Petitioners had proposed to sell their land for a certain consideration amount, for which they executed an agreement. However even after receipt of a substantial amount of money they did not execute the sale deed nor did they return the amount in question.

It has been submitted on behalf of the Petitioners that it is indeed true that an agreement was entered into between the parties

on 24.4.2008 with regard to certain piece of land but the Complainant failed to pay the amount as per the agreement and hence the agreement lapsed. In order to still press his claims the present Complaint was filed in order to settle the dispute expeditiously without approaching them. Moreover it appears that Title Suit No.229 of 2009 was subsequently filed by the Complainant which according to the Petitioners is the correct forum.

On the other hand, the Counsel for the Complainant submits that since the Petitioners had executed an agreement and did not honour the terms, they should be put on trial. It was not he, who had defaulted but the Petitioners.

Considering that there is complete absence of any material to suggest criminal intent and a criminal case is not a substitute for civil proceedings, the application is allowed and the proceedings including the order of cognizance dated 7.4.2009 passed by the court of Sri Vipul Sinha, J.M., 1<sup>st</sup> class, Katihar in Complaint case No.81 of 2009 is hereby set aside.

**(Anjana Prakash, J)**

Narendra/-

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