

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22770 of 2012

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1. Brahamanand Das S/O Late Raghubir Das R/O Village - Sakraili, P.S.
Dandkhora, District - Katihar

.... Petitioner/s

Versus

1. The State Of Bihar
2. Binod Singh S/O Sri Yamuna Singh R/O Village - Barmasiah, District -
Katihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Helal Ahmad, Advocate

For the Opposite Party/s : Mr. Dilip Kumar, (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 20-02-2015 Heard learned counsel for the petitioner as well as

learned APP for the State.

2. Petitioner has prayed for quashing of order dated
10.02.2011 passed by Sri. R.K. Verma, Judicial Magistrate, 1st
Class, Katihar in a Complaint Case No. CA2423/2010 whereby
and whereunder, after taking cognizance for an offence punishable
under Sections 418, 406/34 of the IPC, petitioner along with Deep
Chandra Das have been summoned to face trial.

3. It has been submitted on behalf of the petitioner
that from the complaint petition itself, it is apparent that
negotiation took place in between complainant, Binod Singh and
accused no.1 Deep Chandra Das. As Deep Chandra Das failed to
oblige the complainant, on account thereof, the instant case has
been filed wherein petitioner has also been implicated on the plea

that at the instance of petitioner accused no.1, Deep Chandra Das had declined to execute the sale deed.

4. Learned APP opposed the prayer and submitted that petitioner is the person at whose instance accused no.1, Deep Chandra Das has declined to execute the sale deed.

5. From the complaint petition itself it is apparent that negotiation was in between Deep Chandra Das and Binod Singh without having presence of petitioner. It is also apparent therefrom that money was paid to Deep Chandra Das without having presence of petitioner. Therefore, entrustment was to Deep Chandra Das and on account thereof, presence of petitioner in between is found completely negatived by the complaint petition itself. Therefore, the offence whereunder the cognizance has been taken, does not attract complicity of the petitioner, and as such did not justify his presence during trial.

6. Consequent thereupon, the prosecution against the petitioner is found non maintainable. As such, the order dated 10.02.2011 to the extent of petitioner is quashed. Petition is allowed.

(Aditya Kumar Trivedi, J)

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