

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5933 of 2013

Arising Out of PS.Case No. -214 Year- 2011 Thana -PATNA COMPLAINT CASE District- -

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Krishna Murari Verma, Son of Late Sripati Verma, Resident of Mohalla
Jakkanpur, Behind N.C. Ghoshe, P.S. Jakkanpur, District Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. Sagir Khan Raja, Son of Late Sami Khan, Resident of Flat No. 21,
Malti Apartment, Behind Aaj Press, Frazer Road, P.S. Kotwali,
District Patna.

.... Opposite Parties

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Appearance :

For the Petitioner : Shri Satyavrat Verma, Advocate
For the State : Shri Raj Kishor Singh, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

4 04-05-2015

Heard both sides.

The facts are broadly admitted that initially the complainant was inducted as a tenant and he had deposited Rs. 2,00,000/- as security amount and was paying rent and other charges, like, the maintenance charge on month to month basis. The allegation was that in spite of having paid up the rental of the flat and other charges, the complainant was not getting the receipts in that behalf. Ultimately it so happened that the accused approached him and requested him that if he had paid Rs. 8,00,000/- the flat shall be transferred to him and on agreement having been reached between the parties, Rs. 5,00,000/- was advanced by the complainant to the accused persons and a written agreement was executed in token of

noticing the terms of agreement of sale fixing the total consideration amount at Rs. 11,50,000/-. It was also alleged that another installment of Rs. 2,00,000/- was also paid but the accused persons were not found ready to execute the sale deed and transfer the property.

The agreement to sell has been put on the record which is available as Annexure-4 to the present petition and on perusal of the same it appears that all stipulations clearly had been put down with details of transactions including the mode of payment. While considering the complaint petition what struck me was that the complainant did not whisper that he had ever requested orally or in writing the accused persons to transfer the property and execute the deed of sale in his favour. At this stage, the learned counsel appearing for the complainant has drawn the attention of the Court to paragraph-6 where a request orally appears to be made by the complainant to the accused.

Notwithstanding these averments, allegations and statements of facts, the whole issue percolates to one point as to whether in terms of written agreement setting down all stipulations as to how the sale has to take shape by registering the deed of sale could it be a case in which the accused persons

could be prosecuted by being summoned to stand trial.

The law is very well settled that whenever there is a written agreement setting forth the terms of agreement then the non-performance of the part of the contract on the part of the accused shall never constitute a criminal liability rather it could be a case of civil dispute in which the complainant ought to approach the appropriate civil court seeking the reliefs of enforcing the part of the contract to be performed by the accused persons. That being the position of law, in my view, the very launching of the prosecution by the very initiation of the prosecution by passing the order impugned dated 06.09.2011 appears out and out an abuse of the process of the court.

In the result, the petition succeeds and the same is allowed. The proceedings in Complaint Case No. 214(c) of 2011, pending before the Judicial Magistrate, 1st Class, Patna is hereby quashed.

(Dharnidhar Jha, J.)

Sanjay/-

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