

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10845 of 2013

Arising Out of PS.Case No. -272 Year- 2012 Thana -NALANDA COMPLAINT CASE District- -

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1. Lalkeshwar Prasad Singh @ Lalkeshwar Prasad S/O Late Nanhak Singh
Resident Of Village- Jaitipur More, P.S- Chandi And District- Nalanda And
Presently Resident Of Sardar Patel Colony, Sandalpur Road, P.S-
Bahadurpur, Distt- Patna Petitioner

Versus

1. The State Of Bihar
2. Subodh Kumar S/O Dukhan Prasad Resident Of Village- Allipur, P.S-
Hilsa And District- Nalanda Opposite Parties

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Appearance :

For the Petitioner : Mr. Alok Kumar Sinha, Sr.Adv. with
M/S Bhola Kumar & Ashish Sinha, Adv.
For the State : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

6 21-05-2015 Heard the learned counsel for the petitioner
and the State.

No one appeared on behalf of opposite
party no. 2 even after due service and receipt of the
notice.

The prosecution case as alleged that the
petitioner, husband of Usha Sinha, offer for the sale
of two katha of land, bearing tauzi no. 12274, khata
no. 3571, plot no. 357 on 03.10.2010 and agreed to
sell the land at the costs of Rs.2,30,000/- per katha.
It is, further, alleged that the complainant paid
rupees one lakh for the agreement to sell the land
on 10.10.2010. It was agreed that the sale deed
will be executed and registry of land after election
when the rest amount will be paid. It is, further,
alleged that thereafter the petitioner, on some
pretext or the other, did not execute sale deed or
register the land. On 08.12.2012, the complainant
met the petitioner at Jaitipur for execution of sale
deed and registering the land, then, the petitioner



refused to register on the pretext that the rate has increased and now the land is worth rupees five lakh per katha. The complainant protested that when the appellant has taken the advance of rupees one lakh, then, either execute the sale deed or return back the amount paid as agreement for sale. It is alleged that the petitioner abused the complainant and drive him out and even refused to return the advance taken for agreement to sell. Hence, the complaint case has been filed when the police refused to lodge the first information report.

On complaint, the complainant was examined along with the witnesses and taking into consideration the statements of the complainant and the witnesses, processes have been issued after taking cognizance by order, dated 17.07.2012, which is under challenge.

The learned counsel for the petitioner, however, contends that though allegation is regarding payment of rupees one lakh as agreement to sale, but, there is no document for agreement to sale, however, even taking the allegation true as alleged that the matter concerned with the contract between the parties with regard to the sale of land though from the allegation, itself, taken to be true on it's face value it is only a contract between the parties and this is a case of breach of contract. If the petitioner has breached the contract the remedy lies with civil case for Specific Performance of Contract and has placed reliance on a decision reported in **(2009)14 SCC, 696 (Dalip Kaur & Ors. Vrs. Jagnar Singh & Anr.)**. It has, further,



been contended that though the allegation has been made that there was contract between the parties for sale of the land, but, there is no document either registered or unregistered to show that the complainant has actually or factually paid rupees one lakh and except the oral averment and allegation there is no material to suggest about taking of money. It has, further, been contended that there is no document or evidence regarding taking of the money and even the allegation made in the complainant is taken to be true on the face value it does not make out a case of cheating or criminal breach of trust. It has, further, been submitted that non-refunding the amount of advance is simply the breach of contract and does not constitute a criminal offence. It is submitted that from the allegation made in complaint it is apparent that there is no averment that the petitioner has dishonest and fraudulent intention from the very outset or inception.

Having regard to the fact the learned counsel for the State, however, submits that though there is allegation about the receipt of rupees one lakh and refusal to pay the amount, hence, an offence is made out.

However, having regard to the rival contention that the allegation made in the complaint there is allegation that the parties agreed to sell the land at the rate of Rs.2,30,000/- per katha on 03.10.2010 and it is alleged that rupees one lakh was made on 10.10.2010 for an agreement to sale, however, in the complaint there is no mention about

a specific date or time that when the sale deed shall be executed after election so the time which is essence of contract is missing. It is alleged that the petitioner refused to register the land on 08.04.2012 on a pretext that the price has been increased. However, having regard to the fact that there was agreement to sale and money was paid on 10.10.2010 without specific date uptill when sale deed is required to be executed and land to be registered and the complainant only shows that only on 08.04.2012 the petitioner refused on the pretext that the price of the land has been increased, hence, on these facts the question whether an offence for cheating or criminal breach of trust is made out or the petitioner has at the very out set has fraudulent and dishonest intention or the petitioner induced the complainant for delivery of the property with dishonest intention to deceive at the very out set or whether non-payment of amount is breach of trust, i.e., amount paid was on entrustment of money for the complaint. However, not returning the money, advanced, in the facts and circumstances, may not be an entrustment as the amount paid was the price of land in agreement to sell or not to be kept for benefit of the complainant rather it may be a case of breach of contract between the parties with regard to the money, advanced, where the parties may have the remedy either by instituting a suit for specific performance or other civil remedies, hence, the allegation made neither make out an offence under Section 406 of the Penal Code nor under Section 420 of the Penal Code as the money was

paid as the price of the land and it can not be said that the money was paid to the petitioner to be kept in trust for the benefit of the complainant and the amount paid is not an entrustment for the benefit of the petitioner rather it was a price paid in agreement to sale. It can not be said that money paid was with fraudulent inducement to attract the offence of cheating.

Having regard to the facts and circumstances of the case, the commission of offence is not disclosed. It is true that the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code is required to be exercised sparingly taking into consideration the entire conspectus of the facts and circumstances of the case. However, the provision under Section 482 of the Criminal Procedure Code has been made to do the exdebitio justitiae and having regard to the facts and circumstances of the case no offence made, as per the allegation made out against the petitioner and allowing the proceeding to be continued is an abuse of the process of the Court.

Hence, the order taking cognizance is hereby set aside and the petition is **allowed**.

(Gopal Prasad, J)

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