

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34692 of 2012

Arising out of PS.Case No. -1538(c) Year- 2010, District- PATNA

Rakesh Kumar, Son of Late K.L. Singh, Resident of Singh Motors, Nawagarh, P.O. Khurkhari, District Dhanbad.

.... Petitioner

Versus

1. The State of Bihar.
2. Lallan Mishra, Son of Late Bhagirath Mishra, Resident of Village Barhara, P.O. Rampati, District Madhubani, at present residing at Jyotish Kalyan Kendra, 1 A.N. Path, Boring Road, P.S. Sri Krishnapuri, District Patna.

.... Opposite Parties

Appearance :

For the Petitioner	:	Sri Deepak Kumar, Advocate
For the State	:	Sri Ram Naresh Roy, APP
For the O.P. No. 2	:	Sri Durgesh Kumar Singh, Advocate

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL JUDGMENT

Date: 09-03-2015

Heard.

2. Some of the facts are admitted that the Opposite Party No. 2 Lallan Mishra who is the complainant of Complaint Case No. 1538(c) of 2010 and the present petitioner either personally or through his wife, had entered into an agreement for sale and purchase of a particular flat which is described in the petition of complaint as Flat No. 307, Mamta Apartment, Shivpuri, Patna. The price of the property was finalized at Rs. 11,00,000/- and the premium on the agreed sale and purchase in the form of Rs. 51,000/- was paid by the complainant to the present petitioner.

3. The complainant stated that the present petitioner had brought a previously typed agreement paper and had shown the



same to him in Patna but, subsequently did not choose to sign himself and his wife Smt. Raj Laxmi Singh appended her signature in lieu of the petitioner over the document and received the cheque amount of Rs. 51,000/-. The reason for the petitioner not to sign the document was that he was abroad and was not available in India. The complainant stated that after having paid Rs. 51,000/- by cheque, there was no effort made by the petitioner to convey the property by registering a deed of sale and that forced the complainant to send notices through his counsel but, those also did not have any response from the petitioner and lastly the complainant was forced to file the complaint petition. The admitted fact is that the property was signed by the parties including this petitioner also on the 24th day of March, 2007. The complaint petition was filed on 05.06.2010, i.e., after more than three years of the signing of the agreement paper.

4. There have been many arguments on behalf of the petitioner, like, that the allegation that the agreement paper was brought already prepared by the petitioner to the complaint in Patna was not true rather the document was prepared by the complainant and the same was signed by the parties in Dhanbad. In support of that contention, the attention of the Court had been drawn to the admitted document which also indicates that the agreement had



been reached and made at Dhanbad on the 24th of March, 2007 and further that the agreement paper had been purchased by the complainant Lallan Mishra. If the agreement paper had been purchased by the complainant Lallan Mishra then the allegation that the petitioner had produced a previously typed agreement paper before the complainant appears absurd.

5. Not only that it is trite from the statement of facts that there was a written agreement between the parties and the complainant had performed some part of his contract when he was signing the document and was paying Rs. 51,000/- to petitioner Rakesh Kumar by Cheque No. "579413" to be drawn at the United Bank of India, Patliputra Colony Branch. When there is an agreement to sell and that agreement had been reduced into writing setting down some terms as to how the whole contract has to be performed by the parties then the basic ingredients which constitute an offence under Section 420 of the Indian Penal Code, i.e., mens-rea is always lacking. The offence under Section 420 of the Indian Penal Code could be attracted only when facts alleged could be pointing out to the court that the accused was carrying a mens-rea prior to approaching his counter part with a proposal so as to seeking the delivery of a property voluntarily. There does not appear from the facts of the present case that there was ever any



mens-rea which was guiding the petitioner Rakesh Kumar to defraud the complainant so as to receive from him a voluntary payment of Rs. 51,000/- through cheque. It was an agreement bilater in nature. One part of the agreement and, thus, the contract had been performed by the complainant and the other parts were to be performed by the accused persons. If the complainant had given the notices, as appears he had, and the petitioner accused had not heeded to it, showing his inclination and willingness to perform his part of the contract then it was always required of the complainant to approach the appropriate civil court for enforcing that part of the contract through a decree of the court.

6. I have already noted that the facts presented by the complainant do not indicate that the present petitioner or even his wife Smt. Raj Laxmi Singh were having mens-rea prior to entering into a dialogue for finalizing the sale and purchase of the property. The offence under Section 420 of the Indian Penal Code does not appear made out and what appears to me is that after having found that the complainant had lost the opportunity of knocking at the doors of the civil court so as to seeking the decree directing the enforcement of the contract on the part of the petitioner, he was choosing a completely wrong forum for satiating his grudge. The prosecution besides being outside the purview of Section 420 of the

Indian Penal Code, also appears suffering from inherent legal defect.

7. On account of the reasons assigned, the petition appears meritorious and the same succeeds. The prosecution of the petitioner Rakesh Kumar initiated by order passed on 26.08.2010 is hereby quashed.

8. The petition is allowed.

(Dharnidhar Jha, J.)

Sanjay/N.A.F.R.

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