

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36822 of 2012

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1. Surendra Mahto, S/o Late Ganauri Mahto.
2. Pintu Mahto, S/o Surendra Mahto.
Both resident of Village- Mai, P.O. Mai, Police Station-Parwalpur,
District- Nalanda.

.... Petitioners.

Versus

1. The State of Bihar.
2. Upendra Paswan, S/o Late Ram Lagan Paswan, Resident of Village-
Mai, P.O.- Parwalpur, Police Station- Parwalpur, Distict- Nalanda.

.... Opposite Parties.

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Appearance :

For the Petitioners : Mr. Ajay Mukherjee, Advocate.
For the Opposite Party
No. 2 : Mr. Ramesh Kumar Singh, Advocate.
Mr. Sanjay Kumar Sinha, Advocate.
For the State : Mr. Parmeshwar Mehta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

5 01-04-2015 Heard learned counsel for the petitioners and learned
counsel for the State.

This is an application for quashing the F.I.R. bearing
Parwalpur P.S. Case No. 19 of 2012 registered under Sections
341, 323, 504, 379, 420 and 406/34 of the Indian Penal Code.

The prosecution case as alleged in the complaint, an
agreement has been arrived at between the petitioners and the
complainant for selling of land an area of 5 decimals at the rate of
Rs. 2,00,000/- per decimal (total value ten lakhs) and at the time of
unregistered agreement for sale, the complainant has given Rs.
5001/- to the petitioners and it was agreed that last date of registry
was 06.12.2012 with a condition that if up to 06.02.2012 total



amount of Rs. 10,00,000/- will be paid, then registry will be made. It is further alleged that on 10.01.2012 the complainant came before petitioners along with total amount, but the petitioner refused to take money and he also refused to execute sale deed and registered the said land. It is further alleged that petitioner snatched Rs.2000/- from the pocket of the complainant and assaulted him. However on the basis of complaint F.I.R. lodged under Section 156 Cr.P.C. Police after investigation submitted charge sheet. Cognizance was taken for offence under Sections 406, 420 and 504 of the Indian Penal Code.

Learned counsel for the petitioners submits that allegation made in the Complaint-cum-First Information Report that parties entered into contract for sale with regard to five decimal of land on the basis of agreement. On the basis of unregistered contract the complainant alleged to have paid Rs. 5001/- to the petitioners. It is further submitted that even if the allegation is accepted no offence under Section 420 of Indian Penal Code is made out as the allegation made is only a breach of contract making out a civil liability. However, it is submitted that the petitioner is ready to pay Rs. 5001/- which is alleged to have been accepted by him.

Learned counsel for the opposite party however contends that in addition to the allegation of breach of contract for sale,

there is allegation of assault as well as snatching of Rs.2,000/- from the complainant. The cognizance has been taken for offence under Sections 406, 420 and 504 of the Indian Penal Code after investigation.

Having regard to the allegation made in the complaint is that there was agreement to sale with regard to 5 decimal of land and on the basis of agreement payment of Rs. 5,001/- was made. In the complaint there is allegation to assault and theft but there is nothing in the complaint of any intentional insult or the informant restrained the provocation made to attract 504 of Indian Penal Code.

However, taking into consideration the fact with regard to contract for sale of 5 decimal land at the rate of Rs.2,00,000/- and only Rs. 5001/- alleged to have been given in advance. Moreover, allegation accepted makes out a civil liability for breach of contract. Moreover the payment of Rs. 5001/- for contract to sale 5 decimal of land for a consideration of land worth ten lakh as its worth on the date of agreement that rendering a payment of Rs. 5,001/- is apparent a meager amount, moreover the basis is unregistered document it creates a situation that prosecution story itself appears to be inherently improbable and manifestly absurd.

Having regard to the fact, I do not find any merit in the

complaint petition, no offence under Sections 406 and 420 of Indian Penal Code is made out nor an offence under Section 504 of Indian Penal Code is made out

Having regard to the fact, F.I.R./order taking cognizance quashed, subject to condition that the petitioners shall deposit a draft of Rs. 5,000/- in the name of Upendra Paswan, complainant (opposite party no.2) within one month from today. However, civil remedy will not be barred.

Accordingly, this application is allowed.

m.p.

(Gopal Prasad, J)

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