

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11968 of 2013

Arising Out of PS.Case No. -2949 Year- 2003 Thana -MUZFFARPUR COMPLAINT CASE
District- -

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Maheshwar Prasad & Ors.

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. S.M.Rahman(App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

7 19-05-2015 Heard the learned counsel, Mr. Nachiketa Jha, for the petitioner and the learned counsel, Mr. Shanker Kishore Shahi, for the opposite party No.2.

This Cr. Misc. application under Section 482 Cr.P.C. has been filed by the three petitioners for quashing the order dated 24.01.2013 passed in Trial No.2539 of 2012 arising out of Complaint Case No.2949 of 2003 passed by Judicial Magistrate, Ist class, Muzaffarpur whereby the Court below rejected the application filed by the petitioners under Section 245 of the Code of Criminal procedure for their discharge.

The learned counsel for the petitioners submitted that even if the allegation made in the complaint case is taken to be true, no criminal offence has been disclosed to have been committed by the petitioners and in fact the allegation constitute civil dispute



between the parties and for that the complaining opposite party No.2 has already filed title suit No.506 of 2004 which is pending. The learned counsel further submitted that in fact there was negotiation between the petitioners and opposite party No.2 to sell the property by opposite party No.2 to the petitioners and pursuant to the finalization of the talk, the opposite party No.2 sold the land by executing and registering two sale deeds dated 18.11.2003. The only allegation made by the complaining opposite party No.2 in the complaint case is that there was no talk with respect to sale land of plot No.1853 measuring 4 decimal and the other allegations that the petitioners have not paid the entire consideration amount of Rs.1 lakh which was agreed for selling the land comprised within plot No.1858 and, therefore, in fact the petitioners have committed forgery. According to the learned counsel, these questions and the allegation made by the complaining opposite party No.2 are all of civil nature and there is no intention of the petitioners to cheat or that there was no negotiation as alleged by the complainant. In fact the entire consideration amount has already been paid and that there was negotiation between them to sell the property comprised within plot No.1153 also.

On the other hand, the learned counsel appearing on behalf

of the opposite party No.2 submitted that in fact the entire consideration amount of Rs.1 lakh has not been paid by the petitioners and in the affidavit, they have admitted to pay the remaining consideration amount. In fact there was no talk between the parties to sell land comprised within plot No.1853 measuring 4 decimal. However, fraudulently the petitioners got the sale deed executed with respect to those properties in collusion with the scribe and the witnesses.

On these grounds, the learned counsel submitted that the Court below has rightly rejected the application filed by the petitioners for their discharge.

Perused the order passed by the Court below. The complaint application has been annexed as Annexure '1' to the Cr. Misc. application. At the time of hearing of the Cr. Misc. application, the copy of the plaint was also produced before this Court. From perusal of the complaint application, it appears that the allegation has been made against the petitioners firstly that the entire consideration amount has not been paid and secondly that there was no talk of sale of land of plot No.1853 measuring 4 decimal and in collusion with the scribe and the witnesses, the petitioners got the sale deed executed. From perusal of the plaint copy of which was produced by the petitioners, it appears that in



the said title suit filed by the opposite party No.2, the relief has been sought for to the effect that the two sale deeds dated 18.11.2003 be declared as null and void and without consideration and that it was not executed by the opposite party No.2. It appears that in the complaint, the same facts have been alleged which are the facts alleged in the complaint case.

The Hon'ble Supreme Court in the case of *Dalip Kaur and Ors. Vs. Jagnar Singh & Anr. 2009 (14) SCC 696* has held that **'the ingredients of cheating is that fraudulent and dishonest intention must exist from the very inception when the promise or representation was made. The ingredients of Section 420 of the Penal Code are deception of any person, fraudulently or dishonestly inducing any person to delivery any property or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit. The Hon'ble Supreme Court further held that when the allegation contained in F.I.R. even if given face value and taken to be correct do not disclose commission of the alleged offences and disclosed only a civil dispute the F.I.R. is liable to be quashed.'** In the present case, the only allegation as stated above disclosed only the civil dispute between the parties for which civil suit being title suit No.506 of

2004 is pending between the parties. In the case before the Supreme Court, it appears that in that case also there was agreement between the parties for sale that respondent No.2 agreed to sell 36 acre of land @ Rs.4,70,000/- per acre. The respondent No.2 is said to be a property dealer. He paid a sum of Rs.7 lakhs towards advance to the appellant. A sum of Rs.14,20,000/- was furthermore paid to the appellant within a period of seven months from the date of execution of the sale agreement. Inter alia on the premise that the second respondent was unable to pay the balance amount of consideration, the appellant executed the deed of sale in favour of Balveer Singh and Mahendra Singh. The accused neither return the amount of Rs.22 lakhs nor executed the sale deed in favour of complainant. The High Court in exercise of jurisdiction under Section 482 Cr.P.C. rejected the application on the ground that the petitioners despite the agreement to sell have not been cancelled have not returned the earnest money which is indicative of their dishonest intention leading to registering of F.I.R. The Hon'ble Supreme Court on the allegation in the complaint case held that it discloses only civil dispute between the parties and accordingly quashed the F.I.R. itself. In my opinion, therefore, in the present case wherein the allegation is same as that pleaded in the complaint, in my opinion,

it is only a civil dispute between the parties and if this criminal case is allowed to continue it will not only harass the petitioner but also it will amount to abuse of the process of Court and, therefore, in the interest of justice, I hereby quash the order passed by the Court below and the application filed by the petitioner for their discharge is hereby allowed. This criminal miscellaneous application is thus allowed.

(Mungeshwar Sahoo, J)

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