

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.21296 of 2013**

Arising Out of PS.Case No. -3609 Year- 2011 Thana -VAISALI COMPLAINT CASE District-  
VAISHALI(HAJIPUR)

Vinay Kumar Singh , son of Late Shiv Nandan Singh Resident Of Village-  
Pohiyar, P.S.- Deshri, District- Vaishali

.... .... Petitioner/s

Versus

1. The State Of Bihar  
2. Vidyanand Prasad son of Late Baidnath Prasad Resident Of Village- Jandaha,  
P.S.- Jandaha, District- Vaishali

.... .... Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Shravan Kumar, Sr. Advocate  
Mr. Dinesh Maharaj

For the Opposite Party/s : Smt. Nirmala Kumari, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

**ORAL JUDGMENT**

**Date: 01-09-2016**

Heard Sri Shravan Kumar, learned senior counsel, who was  
assisted by Sri Dinesh Maharaj, learned counsel for the petitioner and  
Smt. Nirmala Kumari, learned A.P.P.

In this case despite valid service of notice the complainant  
/opposite party no. 2 has preferred not to appear. Even at the time of  
admission none had appeared on behalf of the opposite party no. 2 and  
today again there is non - appearance. Accordingly the case was  
taken up ex- parte against the opposite party no. 2.

The sole petitioner has approached this court invoking its  
inherent jurisdiction under section 482 of the Code of Criminal  
Procedure with a prayer to quash an order dated 11.2.2013 passed by



Sri Rajiv Ranjan Singh, learned Judicial Magistrate 1<sup>st</sup> Class, Vaishali at Hajipur (hereinafter referred to as the “Magistrate” ) in Complaint Case No. 3609 of 2011 , Tr. No. 4383 of 2012. By the said order the learned Magistrate has taken cognizance of offence under section 418 & 420 of the Indian Penal Code.

Short fact of the case is that the complainant /opposite party no. 2 had filed a complaint petition in the court of learned Chief Judicial Magistrate, Vaishali at Hajipur which was registered as Complaint Case No. 3609 of 2011. In the complaint petition the complainant had arrayed two persons as accused i.e. the petitioner and one Sri Santosh Kumar. It was disclosed in the complaint petition that the complainant was approached by the petitioner for sale of his land measuring 15 acres for total consideration amount of Rs. 25,51,000/-. It was alleged that at the time of agreement to sale certain amount was paid and thereafter from time to time payments were made and also number of sale deeds were executed by the petitioner in favour of the complainant or his family members. In the complaint petition it has been admitted that total 14 acres 10 decimals land was transferred by the petitioner to the complainant or his family members after payment of consideration amount. However it was alleged that as per the agreement the complainant had paid the money for entire 15 acres of land whereas the petitioner



even after receipt of the money did not execute the sale deed in respect of 90 decimals of the remaining land. In the complaint petition further allegation was made that some interpolation was made by the petitioner in the agreement. After filing complaint petition the complainant was examined on S.A. and thereafter enquiry was conducted. Finally the learned Magistrate by the impugned order took cognizance of offence and summoned the petitioner only. So far accused no. 2 namely Sri Santosh Kumar Poddar who was arrayed as accused no. 2 is concerned, the case was dropped. Aggrieved with the order of cognizance dated 11.2.2013 the petitioner approached this court by filing the present petition on 13.5.2013. After hearing notice was directed to be issued to the complainant /opposite party no. 2 and while directing for issuance of notice this court directed for staying further proceeding in Complaint Case No. 3609 of 2011, Tr. No. 4383 of 2012 i.e. the present case. Finally vide order dated 26.4.2016 since the complainant had not appeared, considering the fact of the case the petition was admitted for hearing and lower court record was summoned which has been received and kept on record.

Sri Kumar, learned senior counsel, at the very outset submits that on minute perusal of the complaint petition itself it is evident that complaint petition was filed maliciously without any



element of commission of any offence. By way of referring to the statement made in paragraph no. 7 and 8 of the present petition he has elaborately stated that as per agreement itself the total consideration amount was Rs. 25,51,000/- for 15 acres of land itself. As per the complaint petition till the date of filing of complaint petition the complainant had made payment of only Rs. 19,46,000/- and the land which has been transferred to the complainant is about 14 acres 10 decimal. Accordingly as per the agreed rate the total consideration amount which was required to be paid by the complainant so far the land which had already been transferred comes to Rs. 23,97,000/- and as such till date about Rs. 4,51,930/- was still outstanding which was required to be recovered from the complainant. Besides this it has been argued by way of referring to the statement made in paragraph no. 10 of the petition that earlier while certain lands were transferred the complainant had issued a cheque for an amount of Rs. 2,00,000/- which fact has been stated in the complaint petition itself but the said cheque was not honoured by the Bank. Immediately thereafter the petitioner filed a complaint case against the present complainant i.e. the opposite party no. 2 vide Complaint Case No. 1943 of 2011 on 18.6.2011. He submits that since from the petitioner's side a complaint was filed regarding dishonour of cheque against the complainant of the present case, the complainant with a

view to create a defence had filed the present complaint and by producing two favourable witnesses he got an order of cognizance in the complaint case. In view of facts and circumstances it has been argued that entire proceeding is liable to be set aside being a malicious and arbitrary proceeding.

Smt. Nirmala Kumari, learned A.P.P. has opposed the prayer.

Besides hearing learned counsel for the parties I have also perused the material available on record particularly the Lower Court Record and the averment made in the present petition. It appears that complainant after noticing the fact that false complaint was initiated against the petitioner it appears has purposely not appeared in the present proceeding. On perusal of the complaint petition it is evident that as and when required after receipt of payment the petitioner had executed sale deeds in favour of either the complainant or his family members. This fact has been stated / accepted by the complainant in the complaint petition itself. At internal page no. 4 the complainant himself has accepted that after issuance of a cheque of Rs. 200000/- due to his own reason he had requested the Manager to stop payment. Meaning thereby that allegation of the petitioner that the petitioner had filed a complaint petition against the complainant of the present case regarding dishonour of cheque is

accepted. In view of the facts and circumstances the court is satisfied that the present petition/ complaint petition was filed against the petitioner maliciously. Accordingly the court is of the opinion that allowing such proceeding will amount to allowing abuse of the process of law and as such the order of cognizance dated 11.2.2013 as well as entire proceeding in Complaint Case No. 3609 of 2011 , Tr. No. 4383 of 2012 so far petitioner is concerned is hereby set aside.

The petition stands allowed.

**(Rakesh Kumar, J)**

Praful/-

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