

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37823 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- DARBHANGA

Vijay Kumar Bairolia S/o late Krishna Kumar Bairolia, resident of Mohalla Masraf Bazar, P.S. Town, Distt. Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. Satya Narain Agrawal S/o late Kusheshwar Pd. Agrawal, resident of village Madhepur, P.S. Madhepur, District Madhubani, presently Sri Krishna Apartment, First floor, Flat/unit No.1/c, Mohalla Masraf Bazar, P.S. Town, Distt. Darbhanga

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. S.N.P. Sinha, Sr. Advocate
Mr. J.N. Sinha, Advocate
Mr. Rohit Kumar, Advocate
Ms. Sangeeta Sharma, Advocate
For the Opposite Party/s : Mr. R.A. Singh, APP
For Opposite Party No.2 : Mr. Sanjeev Kr. Mishra, Advocate

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
ORAL JUDGMENT
Date: 23-02-2016

The Petitioner seeks quashing of the order of cognizance dated 3.4.2010 passed by the Chief Judicial Magistrate, Darbhanga in Darbhanga Town P.S. case No.136 of 2009.

The case of the Informant is that he had negotiated for purchase of a flat from the Petitioner, who was a builder and had paid a certain amount of money. However, subsequently without completion of work the keys of the flat were given to him and thereafter demands of additional money was made on him.

It has been submitted on behalf of the Petitioner that in good faith the builder had given permission to the Informant to live in

the flat even though he had not discharged his full obligation, on account of which he was forced to file Eviction Suit No.5 of 2009 against the Informant on 18.6.2009. In the meanwhile, the Informant filed the present Complaint which was sent for investigation and a few days after the Eviction Suit was instituted on 21.6.2009. The further submission is that evidently the dispute which is alleged in the First Information Report does not make out a criminal offence.

On the other hand, the Counsel for the Informant submits that since the Petitioner did not fulfill his obligation in completing the flat, he should be prosecuted.

Having considered the background facts and the allegations in the First Information Report, I am inclined to hold that the present prosecution is baseless and deserves to be set aside. Hence, the application is allowed and the proceeding including the order of cognizance dated 3.4.2010 passed by the Chief Judicial Magistrate, Darbhanga in Darbhanga Town P.S. case No.136 of 2009 is hereby set aside without prejudice to the rights of the parties.

(Anjana Prakash, J)

Narendra/-

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