

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44877 of 2013

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1. Dhani Lal Sah Son Of Late Shiv Gobind Sah Resident Of Khada Musahi, Police Station- Nautan, District- West Champaran
 2. Ash Babu @ Ash Babu Sah @ Ash Kumar Gupta Son Of Dhani Lal Sah Resident Of Khada Musahi, Police Station- Nautan, District- West Champaran

.... Petitioners

Versus

1. The State Of Bihar
2. Kailash Prasad Son Of Ram Sunder Mahto Resident Of Village- Baikunthwa, P.S.- Nautan, Dist.- West Champaran

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Shiv Kumar Dwivedy
For the State : Mr. Kumar Ranjeet Ranjan, APP
For O. P. No. 2 : Mr. Digvijay Narayan Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 31-03-2016 This application has been filed seeking quashing of the First Information Report of Nautan Police Station Case No. 322 of 2012, disclosing commission of offence punishable under Sections 406 and 420 of the Indian Penal Code.

The gist of the allegation, as contained in the written report of the informant, is that the petitioners owned a land pertaining to Khata No. 172, Khesra No. 43 and admeasuring 11 Kathas 16 Dhurs, situated at village Chaurama Patti. Allegedly, in the month of April, 1999, these petitioners had agreed to transfer the said land in favour of the informant at the rate of Rs. 23,000/- per Katha, Rs. 2,71,000/-, thus, being the total agreed consideration



amount. It is also alleged that the informant had given to the petitioners a sum of Rs. 1,00,000/- on 06.05.1999 through cheque and on different dates, the informant paid to the petitioners a sum of Rs. 1,01,600/- as part payment of the consideration money. The last payment is said to have been made on 05.11.1999. It also transpires from the First Information Report that allegedly, it was agreed between the parties that the informant would be paying the remaining amount of Rs. 70,000/- at the time of registration. It is alleged that these petitioners did not execute sale deed, as agreed upon, for which a panchayati was also held on 06.02.2011. The petitioner did not, however, abide by the decision of the Panchayat and refused to act upon the agreement entered into between the petitioners and the informant for transfer of the said land.

With these allegations, the aforesaid First Information Report came to be registered.

I have heard learned Counsel for the petitioners, the informant-Opposite Party No. 2 and learned Counsel appearing on behalf of the State of Bihar.

Learned Counsel for the petitioners has submitted that no offence under Section 406 and/or 420 of the Indian Penal Code is made out even if the allegations, as contained in the First Information Report, are taken to be true on its



face value. He further submits that it is purely a civil dispute and institution of the present First Information Report is in fact abuse of the process of law and Court. He has placed reliance on a recent decision of this Court in the case of **Shri Malay Chatterji v. The State of Bihar and Another**, reported in **2012 (4) PLJR 59**, and has contended that in the absence of any allegation that from the very inception of the agreement, the petitioners had any intention to cheat the informant, no criminal liability is made out and, therefore, the First Information Report and entire proceeding arising out of the same needs to be quashed, being abuse of process of Court, in exercise of inherent powers of this court under Section 482 of the Code of Criminal Procedure.

Learned Counsel appearing on behalf of the informant-Opposite Party No. 2 has vehemently opposed the prayer for quashing of the First Information Report and has submitted that the police, on the basis of investigation, have already submitted charge sheet and on that basis, the Court below has taken cognizance. He has, accordingly, submitted that at this stage, the First Information Report may not be quashed exercising jurisdiction under Section 482 of the Code of Criminal Procedure.

Considering the rival submissions on behalf of the parties and after having perused the First Information



Report, I find substance in the submission advanced on behalf of the petitioners. Learned Counsel for the petitioners has rightly placed reliance on the decision of this Court in the case of **Shri Malay Chatterji** (supra), wherein this Court, after noticing and following various pronouncements of the Supreme Court, has specifically held that in the absence of any allegation that from the very inception of entering into the agreement, there was intention of the party to cheat the other side, no offence under Section 406 and/or 420 can be said to be made out. It is not in dispute that a title suit has been filed by Opposite Party No. 2, seeking specific performance of contract arising out of same transaction. According to the allegation contained in the First Information Report, the Opposite Party No. 2 had made payments in the year 1999; whereas, the First Information Report came to be lodged in the year 2012, i.e., nearly thirteen years thereafter. The circumstance in which the First Information Report has been filed and the allegations which have been made in the First Information Report, in my opinion, warrant this Court's interference, in exercise of power under Section 482 of the Code of Criminal Procedure, by quashing the First Information Report and the entire proceeding arising out of the same.

This application is accordingly allowed.

The First Information Report of Nautan Police Station Case No. 322 of 2012 as well as the entire proceedings arising out of the said First Information Report, including the order taking cognizance, stands quashed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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