

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 44717 of 2015

Arising out of P.S. Case No. - 873 Year - 2015 Thana - SAHARSA COMPLAINT CASE District - SAHARSA

Saiyad Helal Ashraf, Son of Late Saiyad Gulam Ashraf, Resident of Village – Ashraf Chak, Police Station – Bakhtiyarpur, District Saharsa

.... Petitioner

Versus

1. The State of Bihar
2. Md. Wali Ashraf, Son of Late Md. Ali, Resident of Village Baro, Police Station Phulwariya, District Begusarai

.... Opposite Parties

Appearance :

For the Petitioner : Mr. Dinesh Maharaj, Advocate

For the Opposite Parties : Mr. Suresh Prasad Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 12-05-2016

Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

This is a petition for quashing the order dated 19.06.2015 passed by the learned Sessions Judge, Saharsa in Cr. Revision No. 167 of 2015 by which he has affirmed the order dated 05.06.2015 passed by the learned Judicial Magistrate-1st Class, Saharsa in Complaint Case No. 873(C) of 2015 by which he has dismissed the complaint filed by the petitioner under Section 203 of the Cr.P.C.

The prosecution case as alleged in the complaint petition by the complainant-petitioner is that the opposite party no. 2 had agreed to sell a land described in the complaint to this petitioner on the consideration amount of Rs.17,36,000/- out of which the



petitioner paid Rs.16,00,000/- as a consideration money to sell. However, it is said that after taking the amount of Rs.16,00,000/- as a consideration money for agreement to sell, the land was not executed and when the complainant pressurized for executing the sale deed and its registration then the accused persons showed their reluctance and so ultimately the complainant sent a notice on 30.03.2015 and on 23.04.2015 finally the accused refused to execute sale deed and the land registered after taking the money.

The complainant was examined on solemn affirmation as well as the witnesses examined supported the complaint. However, learned Magistrate taking into consideration the fact held that no offence under Sections 406 and 420 of the Indian Penal Code is made out and the allegation made is purely of civil in nature and so dismissed the complaint. The said order was challenged in revision and the Revisional Court also dismissed the complaint on the ground that the allegations made out are civil in nature.

Learned counsel for the petitioner, however, agitated the matter for quashing the order of revisional court which has confirmed the order of the Judicial Magistrate. However, whatever allegation made is a breach of contract as the opposite party no. 2 had agreed to sell the land and in consideration for the same the money was paid, but the sale deed was not executed nor was the registration

of the sale deed done and hence, the matter concerned only a breach of contract between the parties and for which a breach of a civil consequence lies and the petitioner who has the remedy in civil side, may file a case for specific performance of contract.

However, so far the offences under Sections 420 and 406 of the Indian Penal Code are concerned, neither an offence under Section 420 of the Indian Penal Code is made out nor an offence under Section 406 of the Indian Penal Code is made out. For the ingredients of the offence under Section 406 of the Indian Penal Code, there must be an entrustment of property and the property entrusted must have been misappropriated. So far the allegation made is that the money was paid to the opposite party no. 2 to the tune of Rs.16,00,000/- as the consideration money of the sale of the land and hence, it cannot be said that the said amount of Rs.16,00,000/- paid to the alleged accused was an entrustment. Since there was liberty to sell proceed of the land, it was open for the accused, i.e., the vendor of the property to use it and hence, there is no question of misappropriation of money and, therefore, no offence under Section 406 of the Indian Penal Code is made out.

So far the offence under Section 420 of the Indian Penal Code is concerned, the ingredients for offence under Section 420 of the Indian Penal Code are that there must be some deception

and in consequence of the said deception the person deceived to deliver property. However, it is not a case that the opposite party no. 2 had no land and he deceived the money by falsely representing him and showing it. It has been alleged that the accused deceived the complainant by misappropriating or by any misrepresentation and the money was paid to him. There is no allegation that at the out set, the accused had intention to deceive the complainant and, as such, no offence under Section 420 of the Indian Penal Code is made out.

Hence, having regard to the fact, I do not find any merit to interfere with the impugned order and the petition is dismissed. However, the petitioner may have remedy in civil side.

(Gopal Prasad, J)

Kundan

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