

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37370 of 2014

Arising Out of PS.Case No. -1000 Year- 2012 Thana -MUZFFARPUR COMPLAINT CASE
District- MUZAFFARPUR

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Sanjay Gupta, Son of Late Ram Kumar Gupta, resident of
Mohalla-B.B. Ghosh Lane, P.S. Town, District- Muzaffarpur.
..... Petitioner.

Versus

1. The State of Bihar.
2. Jawaharlal Gupta, Son of Late Mangal Prasad, resident of
Mohalla- Juran Chhapara Main Road, P.S. brahampura,
District- Muzaffarpur.

..... Opposite parties.

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Appearance :

For the Petitioner : Mr. Ganesh Prasad Singh, Advocate.

For the Opposite Party : Mr. Shri Krishna Sinha, Advocate.

Mr. Durga Narayan, Advocate.

For the State : Mr. Parmeshwar Mehta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

3 22-04-2016 Heard learned counsel for the petitioner and learned
counsel for the complainant as well as learned counsel for the
State.

This is a petition for quashing the order dated 17.12.2013,
passed by the Additional Sessions Judge-Vth, Muzaffarpur, by
which he has dismissed the revision application confirming the
order passed under Section 203 of the Criminal Procedure Code
by Smt. Indrani Kisku, Judicial Magistrate, 1st Class, Muzaffarpur.

The prosecution case as alleged in the complaint petition
that the complainant was doing business of selling of land and the
accused persons approached the complainant in October, 2011 for

purchase of land and then the complainant proposed that there is a land of one Maheshwar Prasad Choudhary and proposed to sale the land at the rate of Rs. 2,05,000 (Two lakh five thousand) per katha. It is alleged that after price of the land was fixed the accused persons gave two cheques of Rs. 3,00,000/- in the name of Maheshwar Prasad Choudhary and another cheque of Rs.2,00,000/- in the name of the complainant. The agreement was entered in writing on non-judicial stamp paper and the said agreement was kept by the accused persons. Further case of the complainant is that in the meantime in January, 2011, the accused persons came to the house of the complainant and stated that wife of the accused persons was seriously ill and he has not interest in taking the land so asked to return the money on which the complainant gave Rs.2,00,000/- through Cheque No. 903102 and Rs. 3,00,000/- was given by the land holder Maheshwar Prasad Choudhary was returned by cheque through Cheque No. 715085. Both the cheques were withdrawn. Further, it is alleged that on demand of paper regarding agreement executed by the parties, it was assured by the accused person that he will return the agreement paper after treatment of his wife, but the said paper regarding agreement was not returned. Further case is that under a conspiracy a forged legal notice was given and on receipt of said



legal notice, the complainant went to the house of the accused persons and asked as to why they have given false legal notice and has not returned the agreement on which accused persons abused and assaulted with threat that he will compel to pay Rs. 5,00,000/- on the basis of said agreement and it is alleged that accused persons taking the complainant in trust get cheque of Rs. 2,00,000/- and Rs. 3,00,000/- returned, but not returned the agreement paper.

The said complaint petition was dismissed under Section 203 of Cr.P.C. on the ground that basically the matter concerned with breach of agreement and as per allegation there was exchange of cheques on the basis of agreement and hence, it was ordered that in view of the dispute between the parties with regard to property and hence, there is no basis to allow the continuance of criminal process. The said order was challenged in criminal revision.

The Additional Sessions Judge rightly dismissed the complaint as there was no cause of action as it is only allegation that money paid was returned and accused persons are not returning the agreement paper. However, not returning the agreement paper only has civil consequence and no criminal offence is made out.



Learned counsel for the petitioner however contends that there is allegation in the complaint about abuse and assault when the complainant reached the house of the accused persons on receiving notice, but this fact is apparently a super addition. However, there is no mentioned what was contents of the said notice except vague allegation to illegal collection of the amount.

However, the complaint has been filed under Sections 323, 467, 406, 420/34 and 120 B of Indian Penal Code. However, it is admitted fact that the complaint was filed with regard to agreement to sale of land in continuance of the agreement the amount was paid by cheques. It is further alleged that notice was issued for collecting the amount. However, issuing notice i.e. taking legal action itself does not make out forgery. The forgery has been defined under Section 463 of Penal Code “whoever makes a false documents with intent to cause damage or injury to any person or to enter into any contract or with intent to commit fraud or that fraud may be committed, commits forgery”.

However, going into the provision of Section 464 of Penal Code the allegation made in the complaint against the accused persons does not come under the definition under of false document and hence no offence under Section 463 of Penal code is made out. Further, neither offence under Section 464 and 420

of Penal Code is made out nor there is any enshrine to attract breach of trust or there is adducing resolving in the property to attract the offences. However, allegation of abuse and assault is apparently appears to super addition to harass and making offence against the accused. Hence taking into consideration for offence under Sections 467, 420 and 406 of Penal Code are not made out.

Hence allegation regarding abuse and assault for offence under Section 323 of Penal Code itself appears to be without any basis. Hence, I do not find any merit to interfere with the order dismissing the complaint by the Judicial Magistrate and confirming the same by the Additional Sessions judge.

As a result, the petition is dismissed.

m.p.

(Gopal Prasad, J)

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