

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32751 of 2013

Arising Out of PS.Case No. -303 Year- 2011 Thana -ALAMGANJ District- PATNA

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1. Anil Kumar Sinha @ Bhanu Prasad S/O Bisheshwar Prasad Resident Of Village And P.O.- Noawan, P.S.- Asthawan, District- Nalanda
 2. Nirmala Sinha W/O Anil Kumar Sinha @ Bhanu Prasad Resident Of Village And P.O.- Noawan, P.S.- Asthawan, District- Nalanda
 3. Sujata Sinha @ Kumari Sujata Sinha D/O Bisheshwar Prasad Resident Of Village And P.O.- Noawan, P.S.- Asthawan, District- Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vikas Kumar Sharma, Adv.
For the Opposite Party/s : Mr. Sanjay Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 08-08-2016

I.A. No. 1530 of 2016

This Interlocutory Application has been filed by the petitioners to modify the prayer made in the main quashing application in view of subsequent events which took place after filing of the quashing application.

2. After some arguments, learned counsel for the petitioners seeks leave to withdraw the present Interlocutory Application in order to challenge the order framing charge against the petitioner no.1 by filing another appropriate application under Section 482 of the Code of Criminal Procedure before this Court.

3. Leave is granted. The Interlocutory Application is

disposed of as withdrawn.

Cr. Misc. No. 32751 of 2013

1. In view of the subsequent development, as noted above, learned counsel for the petitioners submits that he would not be pressing the application so far as petitioner no.1 Anil Kumar Sinha @ Bhanu Prasad is concerned.

2. In that view of the matter, the instant application, as far as petitioner no.1 is concerned, is dismissed as not pressed.

3. Challenging the order dated 20th January, 2012 passed by the learned Additional Chief Judicial Magistrate, Patna City, Patna in Alamganj P.S.Case No. 303 of 2011 whereby cognizance of the offences punishable under Sections 467, 468, 471, 420, 406 and 120-B of the Indian Penal Code has been taken against the petitioners no. 2 and 3, it is submitted by the learned counsel for the petitioners that even if the entire allegations made in the FIR is taken to be true on its face value, no offence would be made out as far as petitioners no. 2 and 3, namely, Nirmala Sinha and Sujata Sinha are concerned.

4. Alamganj P.S.Case No. 303 of 2011 was instituted on the basis of a written report submitted by one Umesh Prasad Sinha. The allegations made therein revolve around a piece of land measuring about 4800 sq ft appertaining to survey plots no. 1215 and 2382 of village Bairiya, P.S.- Gaurichak, present P.S. Gopalpur,



District- Patna. The plots originally belonged to one Ajay Kumar Singh, who had authorized the accused Anil Kumar Sinha @ Bhanu Prasad to dispose of the said land through a registered Power of Attorney dated 23rd December, 2010. The informant entered into an understanding with said Anil Kumar Sinha @ Bhanu Prasad for purchase of the aforesaid land on 14th May, 2011 and advanced a sum of Rs. 25,000/- against the consideration amount of the same for which he granted receipt no. 346 dated 14th May, 2010 incorporating the area and survey plot number but without other details, such as, khata, boundary, name of village or price of land. It has further been alleged that a further sum of Rs. 4,70,000/- was paid against the consideration money of the said land in five installments but eventually the accused Anil Kumar Sinha @ Bhanu Prasad sold the aforesaid land to his wife Nirmala Sinha (petitioner no.2) through a registered sale deed dated 8th October, 2011 and thereby cheated the informant, besides committing the breach of trust of the advance allegedly taken against the disputed land. It has further been stated that the petitioner no.3 Sujata Sinha signed the deed as an attesting witness.

5. After completing the investigation, the police submitted charge-sheet against the petitioners on the basis of which cognizance of the offences punishable under Sections 467, 468, 471, 420, 406

and 120-B of the Indian Penal Code was taken.

6. It is contended that even if the entire prosecution case, as alleged in the FIR, is believed to be true, none of the ingredients of the offences alleged would be attracted against the petitioners no.2 and 3 of the present case. It is further contended that the entire transaction of the informant of the case was with the accused Anil Kumar Sinha @ Bhanu Prasad. The other two petitioners had never negotiated with the informant of the case nor had they ever received any payment from him. The only allegation against them is that the land in question was sold in favour of the petitioner no.2 and the petitioner no.3 had attested the signature of petitioner no.2 on the sale deed.

7. Mr. Sharma has submitted that the purchase of a piece of land or attesting signature of a bona fide person on the sale deed, by no stretch of imagination, can be said to be an act which would attract the offence of cheating, forgery or forgery for the purpose of cheating.

8. Learned counsel for the State has opposed the application filed on behalf of the petitioners no. 2 and 3. However, he failed to meet any of the points raised by the learned counsel for the petitioners in support of his argument that the alleged offences would not attract the ingredients of the offences alleged.

9. I have heard the respective counsel for the parties and perused the record.

10. I find substance in the arguments advanced by the learned counsel for the petitioners. Apparently, there is no allegation of inducement on the part of the petitioners Nirmala Sinha and Sujata Sinha pursuant to which the informant paid the consideration money to the accused Anil Kumar Sinha @ Bhanu Prasad. There is nothing on record to suggest that these two petitioners had any intention to cheat the informant right from inception. There is also no allegation against the two lady petitioners that they forged, tampered or interpolated any record. The only allegation against them is that Nirmala Sinha purchased the land in question and Sujata Sinha became the attesting witness to the signature of Nirmala Sinha on the sale deed. Certainly these acts would not constitute any offence.

11. In that view of the matter, the impugned order dated 20th January, 2012 passed by the learned Additional Chief Judicial Magistrate, Patna City, Patna in Alamganj P.S.Case No. 303 of 2011, so far as petitioners no.2 and 3 are concerned, cannot be justified from any angle.

12. Accordingly, the impugned order dated 20th January, 2012 passed by the learned Additional Chief Judicial Magistrate, Patna City, Patna in Alamganj P.S.Case No. 303 of 2011, as far as

petitioners no.2 and 3 are concerned, is set aside. As a consequence thereof, the entire criminal proceedings arising from the aforesaid FIR against them are also quashed.

13. It is made clear that this Court has not considered the case of the petitioner no.1 Anil Kumar Sinha @ Bhanu Prasad on merits, as charges have already been framed against him and the learned counsel for the petitioners has already withdrew his application in order to challenge the order framing charge against him by filing a separate application.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	-----
Uploading Date	11-08-2016
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