

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 20048 of 2014

Arising out of P.S. Case No.-1200 Year-2013 Thana-PATNA COMPLAINT CASE District-PATNA

Smt. Meenakshi Chatterjee, W/o Shri Babla Chatterjee, Resident of Mohalla Chiraiyatand, Khas Mahal Road No. 3, P.S. Jakkanpur, District Patna

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sunil Srivastava

For the Opposite Party/s : Mr. Md. Fahimuddin (App)

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

2 07-04-2016

Learned counsel for the petitioner and the State.

This is a petition for quashing the order dated 11.12.2013 passed by the learned 14th Additional Sessions Judge, Patna in Cr. Revision No. 602 of 2013 by which he has affirmed the order dated 05.08.2013 passed by the learned Judicial Magistrate-1st Class, Patna in Complaint Case No. 1200(C) of 2013 filed by the petitioner against the accused persons under Section 203 of the Cr.P.C.

The prosecution case, as alleged in the complaint petition, is that accused persons entered into an agreement for sale dated 29.02.2012 in respect of their house situated at Jamal Road with the complainant for a consideration money of Rs.2,50,00,000/- out of which the complainant paid Rs.20,00,000/- as an earnest money and the accused persons agreed to execute and register sale deed after receiving the balance consideration amount within ten months with the extension period of three months and complainant to get the sale deed executed and registered in her favour contacted the accused in November, 2012

and December, 2012, but they refused to execute and register the sale deed in her favour in terms of the agreement of sale and gave false assurance and failed to execute and register sale deed.

On the complaint, statement of the complainant on solemn affirmation and statement of witnesses examined, the trial Court taking into consideration the fact that the matter relates to civil dispute with regard to the breach of contract and hence, dismissed the complaint. The complainant preferred revision before the Sessions Judge and he has also dismissed the revision holding that no offence under Sections 406 and 420 of the Indian Penal Code is made out.

Learned counsel for the petitioner, however, contended that the learned Magistrate has not followed the provision under Section 203 of the Cr.P.C. He has pointed out that the learned Magistrate though has stated that he perused the complaint petition, solemn affirmation of the complainant and the Beybeyana Deed but has not mentioned that he has also perused the statement of the witnesses and hence, the order is per se illegal. It has further been contended that the learned Sessions Judge has gone into the great detail and all pros and cons like a trial passed the order and hence, order passed by the learned Sessions Judge suffers from infirmity.

However, after going through the facts, the allegation made is that there was contract between the parties for the sale of house for a consideration of Rs.2,50,00,000/- out of which Rs.20,00,000/- was paid and the rest amount was agreed to be paid within a year with

extended period of three months. However, it is alleged that during the period the petitioner was ready to pay the due amount, but the accused neither accepted the money nor executed the sale deed.

However, it is a disputed question whether the petitioner was willing and ready to pay and the amount paid by petitioner is the sale proceed of the land and money paid as agreement to sale so the amount paid as the consideration money is not an entrustment and so if one of the ingredients for offence under Section 406 of the Indian Penal Code is missing, the offence is not made out under Section 406 of the Indian Penal Code and further there is breach of agreement so it is neither a case of entrustment nor a case of misrepresentation, rather a case of breach of contract and the case whether the complainant was willing and ready to pay is a civil dispute. Further there is no element of misrepresentation as there was land and agreement, but the question whether the complainant was ready to pay is a civil dispute hence, not attracts criminal offence. It is a matter of civil dispute and a breach of contract and taking into consideration the allegation true on the face value of the complaint itself, it is apparent that the allegation made is a breach of contract and the offence under Sections 406 and 420 of the Indian Penal Code is not made out. The learned Magistrate as well as the trial Court has well considered the materials. However, going through the question whether the learned Magistrate complying the provisions contained in Section 203 of the Cr.P.C., it is apparent that the Magistrate has look into the complaint as well as the statement of the

complainant on solemn affirmation and the statement of witnesses and formed an opinion whether a prima facie case is made out.

However, the learned Magistrate has taken into consideration the complaint and also accepted the prosecution case formed an opinion dismissing the complaint and has given good reason for dismissing the same and hence, substantially complied the provision under Section 203 of the Cr.P.C.

Hence, I do not find any merit to interfere with the order impugned, accordingly, the petition is dismissed.

Kundan

(Gopal Prasad, J)

U		T	
---	--	---	--