

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.115 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- SITAMARHI

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1. Anuradha Mehta @ Anuradha Mundkur D/o Late Ravindra Nath Mehta, W/o Balmiki Mundkur, Resident of 36/201, Heritage City, Gurgaon, Haryana

.... Petitioner/s

Versus

1. The State of Bihar
2. Manish Kumar Singh, Son of Umesh Prasad Singh, residing at Narha, P.S. Majorganj, District Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Advocate

For the Respondent/s : Mr. Ashok Kumar, Advocate

For the State : Mr. Amrit Kumar Rakesh, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 07-08-2017

By an order, dated 07.12.2016, passed by the learned Judicial Magistrate, Sitamarhi, in Complaint Case No.C1/44/2011, petitioner's application for discharge under Section 245 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) has been rejected. The said order is under challenge in the present criminal revision application.

2. I have heard learned counsel for the petitioner and the learned counsel representing the Complainant/Opposite party No.2.

3. The case of the prosecution as narrated by the complainant in his complaint petition is that the complainant



had entered into an agreement for sale of 40 decimal of land pertaining to Khata No. 1563, Khesra No. 7684 situate at Runisaidpur Bazar, Sitamarhi for consideration of a sum of Rs. 30 lakh. On 06.10.2010, the complainant had paid to the petitioner the said sum of Rs. 30 lakh in cash in the house of one Prabhash Kumar Agarwal. It is also alleged that the petitioner had received a sum of Rs. 38 lakhs 50 thousand from witness No.1 Vijay Tahlani, who happened to be the power of attorney holder of the petitioner, with respect to other lands situate at Runisaidpur. The petitioner is said to have executed power of attorney in favour of said Vijay Tahlani for registration of the land and she had promised the complainant that above mentioned land shall be registered in his favour by said Vijay Tahlani and he would execute sale deeds with respect to the land to other purchasers for which the said amount of Rs. 38 lakh 50 thousand was received by the petitioner. It is also said that in token of receipt of money, the petitioner had issued receipt.

4. It is also alleged that the sale deeds were prepared but before the registered sale deed could be executed by the said power of attorney holder, the petitioner withdrew the power. Resultantly, the power of attorney holder Vijay Tahlani could not execute the said sale deed in favour of the complainant. According to the complainant, the said act of the



petitioner constitutes offence under Sections 420 and 406 of the Indian Penal Code.

5. Learned counsel appearing on behalf of the petitioner has relied on a Supreme Court's decision in case of Murari Lal Gupta Vs. Gopi Singh reported in (2005) 13 SCC 699, to submit that the complaint petition does not disclose any averment from which it can be inferred that there was any fraudulent or dishonest intention from the very beginning. It has also been submitted that the case of the prosecution of payment of a sum of Rs. 30 lakh in cash for the purpose of sale of the land is highly improbable. He has thirdly submitted that this case has been lodged at the instance of said Vijay Tahlani, who had filed the complainant petition against the petitioner giving rise of Complaint Case No. C1/44/2011 with reference to alleged receiving of a sum of Rs. 38 lakh 50 thousand for the purpose of execution of sale deed, with respect to certain other lands belonging to the petitioner. In that case also, alleging cancellation of power of attorney, the complaint case was filed. This Court by order, dated 08.10.2015 passed in Cr. Misc. No. 22217 of 2013, has quashed the same. The said order has been brought on record by way of Annexure-6 to this application.

6. Learned counsel appearing on behalf of the complainant, on the other hand, has submitted that the



petitioner had earlier approached this Court by filing an application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the entire criminal prosecution, which had given rise to Criminal Misc. No. 34454 of 2011. This Court refused to quash the order taking cognizance, dated 26.03.2011 with a direction to the trial Court to expedite the trial. He has submitted that the said order of this Court, dated 24.02.2015 came to be challenged before the Supreme Court in Special Leave Petition(Cri) 3937 of 2015, which also came to be dismissed by the Supreme Court by order, dated 21.08.2015. He has accordingly, submitted that at this stage this Court should not interfere with the order passed by the Court below dismissing petition for discharge and the trial so commenced be allowed to continue and conclude.

7. I find force in the submission made on behalf of the petitioner. As I have been noticed, the case of the prosecution is that the complainant had paid 30 lakhs in cash to the petitioner as consideration for execution of sale deed with respect to land in question. According to the complainant, the registered deed was to be executed by the power of attorney holder Vijay Tahlani. In that background, he has rightly placed reliance on Supreme Court's decision in case of **Murari Lal Gupta** (supra), paragraph 6 of which reads thus:-

"6. We have perused the pleading of



the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having taken into consideration all the material made available on record by the parties and after hearing the learned counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the Court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurize the petitioner for coming to terms



with the respondent.”

8. In response to a query made by this Court as to whether the Opposite party No.2 has filed any suit for specific performance of contract, learned counsel for Opposite party No.2 has answered in negative. He has, however, submitted that the power of attorney holder has filed suit for specific performance of contract. It is thus, apparent that the complainant, instead of taking recourse to the procedure under the civil law either for refund of the money or for execution of the sale deed in his favour has filed the complaint petition for purpose/cannot be held to be appropriate. As has been mentioned by the Supreme Court in case **Murari Lal Gupta** (supra), here also it is not the case of the complainant that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement of sale or could not have transferred it.

9. In the present case, it has been vehemently argued on behalf of the petitioner that the case of the prosecution of payment of huge amount of Rs. 30 lakhs in cash itself makes the case of the prosecution highly improbable. I do not intend to comment on that. In any event, in my view no offence of cheating under Section 420 of the Indian Penal Code or misappropriation under Section 406 of the Indian Penal Code is made out on the basis of what has been alleged in the complaint petition. In my view, that being the position,



the Court below ought to have passed appropriate orders for discharge in the absence of any material to show commission of an offence.

10. The impugned order, is, accordingly, set aside.
This application is allowed.

11. The petitioner stands discharged of the offence as I am of the view that filing of the complaint petition is an abuse of the process of the Court and no offence under Sections 420 of the Indian Penal Code or Section 406 of the Indian Penal Code can be said to be made out, on the basis of materials on record, sufficient for framing of charge.

12. This application stands allowed.

(Chakradhari Sharan Singh, J)

ArunKumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22,08,2017
Transmission Date	

