

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49406 of 2013

Arising Out of PS.Case No. -932 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Upendra Mandal, S/o Late Shivdhari Mandal, Resident of Raghunath Path,
(R.P.S. College Road) New Baily Road, P.O. + P.S. Danapur, District. -
Patna - 801503

.... Petitioner/s

Versus

1. The State of Bihar
2. Mohan Prasad, S/o Late Bhuneshwar Pd. Srivastava Resident of
Village + Post - Bengahi, Police Station - Bairgania, District - Sitamarhi

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Manoj Kumar Ambastha, Advocate
For the O.P. No. 2 : Mr. Manoranjan Kumar, Advocate
For the State : Ms. Nirmala Kumari (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

5 19-05-2017 This criminal miscellaneous has been filed for

quashing the order dated 04.05.2013, in Complaint Case No.

932 (C) of 2012 passed by Sri Uma Shankar, the then Judicial

Magistrate 1st Class, Danapur, whereby and whereunder after

finding prima facie case to be made out under Section 420 of

the Indian Penal Code the accused persons have been ordered

to be summoned.

Heard the learned counsel for the petitioner, the

learned A.P.P. for the State and the learned counsel for the

opposite party no.2.

The complaint case No. 932 (C) of 2012 was filed



by opposite party no.2 wherein the petitioner is accused no.4 with allegation that petitioner acted as an agent and broker and got purchased the land from accused nos. 1, 2 & 3 with assurance that the land is free from all dispute, but when after purchase for consideration amount of Rs. 6,89,000/-, the complainant started construction then all the accused persons including the petitioner came at the spot and after abusing got stopped the work after saying that case is going on in the Court and after inquiry it transpires that accused nos. 1, 2 & 3 have filed Title Suit No. 126 of 1996 against one Uday Kumar Sinha with respect to the purchase land also and the learned court has passed the order directing the parties to maintain *status quo* and, as such, the accused persons have committed cheating. The complainant was examined on solemn affirmation. Three inquiry witnesses namely Brahmchari Surendra, Nand Kishore Prasad and Varun Kumar have been examined and all have supported the case as made out in the complaint petition and thereafter the learned Magistrate after considering the materials collected during inquiry has passed the impugned order.

The learned counsel for the petitioners submits that the petitioner has got no concern, he has acted only as an



agent, he is not the vendor, he has not received any amount and the learned Magistrate without applying his judicial mind has passed the impugned order summoning the petitioner also and, as such, the impinged order with respect to the petitioner is fit to be quashed.

The learned A.P.P. and learned counsel for the opposite party no.2, on the other hand, submit that it was the petitioner who assured the complainant to give land free of dispute and he got executed the sale deed from accused nos. 1, 2 & 3 and on his assurance consideration amount of Rs. 6,89,000/- was paid. The petitioner has acted as witness also and further the petitioner and other co-accused got stopped the work when construction work was started by the complainant. The opposite party no.2 further submits that the petitioner has got criminal antecedent as he is involved in more than 12 cases.

Having considered the submissions urged at the Bar, going through the record and finding that the learned Magistrate after considering the complaint petition, the statement of the complainant and the statement of three inquiry witnesses and after finding prima facie case to be made out against the petitioner also summoning order has



been passed which appears quite legal, proper and correct. At this stage, the Court is required only to see as to whether on the basis of materials collected during inquiry *prima facie* offence is made out or not so that the accused may be summoned. In this case the learned Magistrate has found *prima facie* case and after being satisfied from materials collected during inquiry has passed the impugned order which requires no interference by this Court.

In the result, the impugned order is hereby confirmed and finding no merit in this case, the same is hereby dismissed.

(Jitendra Mohan Sharma, J.)

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