

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33013 of 2013

Arising Out of PS.Case No. -59 Year- 2012 Thana -BYPASS District- PATNA

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1. Ram Dhani Mahto, Son of Late Dukhu Mahto, Resident of Village- Bahri Begampur, Mandai, P.S.- By Pass, District- Patna.
 2. Harendra Kumar Son of Ramdhani Mahto, Resident of Village- Bahri Begampur, Mandai, P.S.- By Pass, District- Patna.

.... Petitioners

Versus

1. The State of Bihar
2. Mahesh Prasad, Son of Late Vishwanath Prasad, Resident of Mohalla - Bahri Begampur, Mandai, P.S.- By Pass, District- Patna.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Rajendra Prasad, Sr. Advocate.
For the Opposite Parties : Mr. Bikram Deo Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 09-05-2017

Heard Shri Rajendra Prasad, learned senior counsel for the petitioner and Shri Bikram Deo Singh, learned counsel for the informant.

2. The petitioners preferred this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') to quash the order dated 11.04.2013 passed by the learned Additional Chief Judicial Magistrate, Patna City in Bypass P.S. Case No. 59 of 2012, by which the learned Additional Chief Judicial Magistrate, Patna City took cognizance under Sections 406 and 420 of the Indian Penal Code.

3. The brief facts which are relevant for the disposal of this



case are that the informant expressed his desire before Amarnath Mehta to purchase a piece of land for construction of his house, on such Amarnath Mehta introduced Sanjay Kumar. Sanjay Kumar disclosed that Harendra Kumar, petitioner no. 2 intends to sell his land on consideration of Rs. 4 lac 1 thousand. The informant paid the entire money through cheques in favour of Sanjay Kumar, the broker of the land, as Harendra Kumar, the owner of the land, disclosed that he did not have any account in the bank but, Sanjay Kumar did not return the money nor Harendra Kumar executed the sale deed. The police after investigation found the case true under Sections 406 and 420 of the Indian Penal Code and submitted report, thereupon the learned Additional Chief Judicial Magistrate, Patna City vide order 11.04.2013 took cognizance against the petitioners and Sanjay Kumar. The petitioners Ram Dhani Mahto and Harendra Kumar preferred this petition.

4. Learned counsel for the petitioners submits that Sanjay Kumar acknowledged vide Annexure-5, that Harendra Kumar had no knowledge that he took consideration amount for selling a piece of land of Harendra Kumar. It is further submitted that from perusal of the FIR and the entire case diary, it appears that not a single word has been whispered against Ram Dhani Mahto who happens to be father of Harendra Kumar, petitioner no. 2. No offence under Sections 420



and 406 of the Indian Penal Code is made out against Ram Dhani Mahto, petitioner no. 1. In reply to the submissions of the learned counsel for the petitioners, learned counsel for the informant Shri Bikram Deo Singh very candidly and fairly admitted that, ofcourse, there is no whisper against Ram Dhani Mahto and the order taking cognizance against him appears to be bad but, there are sufficient material against Harendra Kumar who is a party to the negotiations and Sanjay Kumar accepted the money, through cheques and cash, on behalf of Harendra Kumar.

5. Having considered the facts and on perusal of the records, it appears that the informant did not whisper even a single word against Ram Dhani Mahto, the petitioner no. 1. Ram Dhani Mahto did not take part in the negotiation for selling the land. The informant has also not stated in the FIR or during course of investigation that, Ram Dhani Mahto played any role in negotiation for selling the land, therefore, I find that the order taking cognizance under Sections 420 and 406 of the Indian Penal Code against Ram Dhani Mahto is bad and illegal and not sustainable.

6. Accordingly, so far as the case of Ram Dhani Mahto, petitioner no. 1, is concerned, this quashing petition is allowed. The order dated 11.04.2013 passed in Bypass P.S. Case No. 59 of 2012 so far it relates to Ram Dhani Mahto is quashed.



7. So far as the case of Harendra Kumar, petitioner no. 2 is concerned, there is ample material against him that he took part in the negotiation and on his assurance the informant issued cheques even in the name of Harendra Kumar but, later on Harendra Kumar requested the informant to handover the cheques in the name of Sanjay Kumar, as he had no bank accounts and Sanjay Kumar accepted the entire consideration money but, later on, Harendra Kumar refused to execute the sale deed, therefore, I find that the order taking cognizance against Harendra Kumar is perfectly right and does not require any interference.

8. Accordingly, so far as the case of petitioner no. 2 Harendra Kumar is concerned, the quashing petition is dismissed.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
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