

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18336 of 2014

Arising Out of PS.Case No. -1586 Year- 2013 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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1. Md. Gulrej
2. Md. Imroj @ Md. Imroj Alam
3. Md. Afroj @ Md. Afroj Alam
4. Md. Tabrej @ Md. Tabrej Alam Sons of Marhum Hussain
5. Md. Tanbir @ Md. Tanbir Alam Son of Marhum Abdul Kayum All resident of Mohalla - Mogalkuan, P.S. - Soh Sarai, District - Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Md. Irfan Son of Mokhtar Marhum resident of Muhalla Mogal Kuan, P.S. SohSarai, District Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad, Sr. Advocate. Mr. Ritesh Kumar, Adv.
For the Opposite Party/s	:	Mr. Praveen Kumar Singh, Adv.
For the State	:	Mr. Nawal Kishore Prasad, APP.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 03-11-2017

1. Heard learned counsel for the petitioners and the State.

2. This application has been filed for quashing the order dated 24-02-2014 passed by Smt. Rachana Srivastava, learned Judicial Magistrate-Ist Class, Bihar Sharif, Nalanda Case No. 1586 (C) of 2013 by which, the learned Magistrate after holding inquiry u/S 202 Cr.P.C. has found prima facie against the petitioners for the offence under Section-420, 120B of the IPC.

3. Counsel for petitioners has submitted that as per



complaint, there is allegation against Tanbir. The complainant is alleged to have entered into agreement with Tanbir and has made payment of Rs. 1,51,000/- to Md. Tanbir. Petitioner Nos. 1 to 4 are bona fide purchasers who have purchased the land after giving consideration amount. They have no knowledge about any agreement with regard to aforesaid land between the complainant and Md. Tanbir. Counsel for petitioners has also read out the S.A. of the complainant wherein the complainant has specifically stated that money was given to Md. Tanbir. It has further been submitted that the complainant has also filed a suit for specific performance of contract vide T.S. No. 343 of 2013 which is pending before the learned Sub Judge-I, Bihar Sharif, Nalanda.

4. Counsel for the petitioners has relied upon a decision reported in **2016(4) PLJR 231 (Dhani Lal Sah & Anr. Vs The State of Bihar & Anr.)**, in which the Hon'ble Court held that "*in the absence of any allegation that from the very inception of entering into the agreement, there was intention of the party to cheat the other side, no offence u/ss. 406 and/or 420 can be said to be made out.*" In another decision reported in **2016 (3) PLJR 949 (Smt Annu Sinha & Ors. Vs. The State of Bihar & Anr.)**, the Hon'ble Court has held that "*no written document to show that petitioners entered into an agreement to sell in favour of complainant -would*



not attract ingredients of offence u/ss 406 and 420 of the Indian Penal Code” and has argued that there is no ill intention of the petitioners at the time of entering into agreement. No offence can be said to have been committed for the offence under Section-420 of the Indian Penal Code.

5. Counsel for opposite party No. 2 has appeared and submitted that Md. Tanbir (petitioner No. 5) has entered into an agreement with the complainant and has received an amount of Rs. 1,51,000 and always avoided in spite of repeated request to execute sale deed and he ultimately, executed sale deed of the land in favour of petitioner Nos. 1 to 4 and in this manner, has committed offence of cheating with the complainant.

5. This court after looking into the allegation in the complaint petition and also S.A. of the complainant finds that petitioner Nos. 1 to 4 are bona fide purchasers of the land from Md Tanbir after making payment of proper consideration money. They have no personal knowledge about the earlier agreement entered into between the complainant and Md. Tanbir.

6. Therefore, no ingredient for offence under Sections-420 and 120B IPC is available in this case against the petitioner Nos. 1 to 4. It further appears that complainant has filed T.S. No. 343 of 2013 against Md. Tanbir for specific performance of contract.



7. From the averment in the complaint petition, it is not apparent that Md. Tanbir had any intention to cheat the complainant. It is mentioned in the complaint petition itself that an agreement has been entered into between Md. Abdul Qayum for a land and a sum of Rs. 1,51,000/- was also paid to Md. Qayum, father of petitioner No. 5 but no any paper of agreement has been filed along with the complaint petition.

8. As per own averment of the complainant, there was a clause in the agreement that after making payment of remaining four lacs, the complainant will get the sale deed executed on 31-01-2014. Later on, the complainant learnt that on 29-10-2013, Md. Tanbir executed sale deed of aforesaid land in favour of petitioner Nos. 1 to 4, although as per agreement till 31-01-2014, the same was to be executed. From Annexure-4, it appears that the complainant has already filed the suit for specific performance of contract against Md. Tanbir vide T.S. No. 343 of 2013 which is pending before Sub Judge-I, Nalanda. As such, the complainant has already adopted the civil remedy for his grievance. Therefore, this court is of the view that continuance of criminal proceeding against the petitioners is nothing but mere harassment to them and an abuse of the process of law.

9. Accordingly, the impugned order dated 24-02-2014 passed



in Case No. 1586 (C) of 2013 along with entire criminal proceeding with respect to the petitioners is hereby quashed.

10This Cr. Misc. Application is therefore *allowed*.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10-11-2017
Transmission Date	10-11-2017

