IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19713 of 2012

Arising Out of PS.Case No. -735 Year- 2007 Thana -null District- BHAGALPUR

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1. Smt. Rita Singh, wife of Shri Rabindra Narayan Singh, Flat No. 203, Aishwarya Apoorva Homes Ram Nagar, Hazaribagh.
2. Smt. Dibya Singh, wife of Shri Rajnish Singh, resident of Flat No. 502, Giri Gaurav Apartment, Plot No. C-9, Ambazhari Layout Hill Top, Nagpur, Maharastra-440033

.... Petitioner/s

Versus

1. The State of Bihar.
2. Biresh Kumar Sinha, son of late Shri Kuldeep Sahay, r/o Kashi Mistri Lane, Chhoti Khanjarpur, P.S. Barari, District Bhagalpur.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 19720 of 2012

Arising Out of PS.Case No. -735 Year- 2007 Thana -null District- BHAGALPUR

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Smt. Vidya Devi, wife of Shri Saryoo Prasad, r/o Kashi Mistri Lane, Chhoti Khanjarpur, P.S. Barari, Distt. Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Biresh Kumr Sinha, s/o late Shri Kuldeep Sahay, r/o Kashi Mistri Lane, Chhoti Khanjarpur, P.S. Barari, District Bhagalpur.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 48839 of 2008

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHAGALPUR

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1. Shri Rabindra Narayan Singh, son of late Shri Ram Das Singh, r/o 2318, Sector – 4D, Bokaro Steel City, Jharkhand – 827004
2. Shri Saryoo Prasad, son of late Jagdamba Sahay, r/o Kashi Mistri Lane, Chhoti Khanjarpur, P.S. Barari, Distt. Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Biresh Kumar Sinha, son of late Shri Kuldeep Sahay, r/o Kashi Mistri Lane, Chhoti Khanjarpur, P.S. Barari, Distt. Bhagalpur (Bihar)

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.... Opposite Party/s

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Appearance :
(In Cr.Misc. No.19713 of 2012)
For the Petitioner/s : Mr. T.N. Maltin, Senior Advocate
Mr. Gopal Govind Mishra, Advocate.
For the Opposite Party/s : Mr. Nawal Kishore Prasad, A.P.P.
(In Cr.Misc. No.19720 of 2012)
For the Petitioner/s : Mr. T.N. Maltin, Senior Advocate
Mr. Gopal Govind Mishra, Advocate
For the Opposite Party/s : Mr. Nawal Kishore Prasad, A.P.P.
(In Cr.Misc. No.48839 of 2008)
For the Petitioner/s : Mr. T.N. Maltin, Senior Advocate
Mr. Gopal Govind Mishra, Advocate.
For the Opposite Party/s : Mr.. Nawal Kishore Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 18-07-2017

1. These Criminal Miscellaneous applications arise out of the same P.S. Case and as such, they are being heard together and disposed off by a common judgment.

2. These applications under Section 482 of the Code of Criminal Procedure have been filed for quashing the order dated 17.6.2008 passed by the Judicial Magistrate, Bhagalpur, in Kotwali (Barari) P.S. Case No. 735 of 2007 by which the learned Magistrate took cognizance against the petitioners for the offences under Sections 406, 420, 506 and 120(B) of the Indian Penal Code.

3. Heard learned counsel for the petitioners.

4. Though opposite party No. 2 has already appeared through Vakalatnama and his name is appearing in daily cause list, but he has chosen not to appear before this Court at the time of

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hearing.

5. Learned counsel for the petitioners has submitted that for the same cause of action, the complainant has preferred civil remedy by filing Title Suit No. 160 of 2008 for specific performance of contract in which the Court by its final judgment passed on 30.6.2016 has clearly held that complainant (plaintiff) in the suit is not entitled for specific performance of contract in question. The court, has however, ordered for money decree of Rs.12,00,000/- along with compounding interest thereon @ 6 per cent per annum since the date of institution of the suit till the date of its recovery/realisation in favour of Complainant (plaintiff) in the suit.

6. The brief fact as appears from the written report filed by the informant is that he has entered into agreement with Ravindra Narayan Singh and money was paid for purchase of the property as mentioned in the written report for Rs.12,00,000/- by way of Demand Draft in the name of Rita Singh, wife of Ravindra Narayan Singh and daughter of Rabindra Narayan Singh namely, Dibya, as per his direction. It has further been submitted that the informant always made request with the accused persons to execute the sale deed, but they never executed the same and made further demand of Rs.5,00,000/- as *Rangdari*. It is alleged that last Bank Draft and Cheque of Rs.4,30,000/- was paid to the wife of the informant

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namely, Smt. Rita Singh on 5.4.2006.

7. The police after investigation submitted charge sheet against all the accused/petitioners and on the basis of charge sheet, cognizance has been taken by the learned Magistrate for the offence under Sections 406, 420, 506 and 120B of the Indian Penal Code by order dated 17.6.2008.

8. The point for consideration in this case is whether the impugned order is valid when for the same cause of action, the informant has filed the civil suit, vide Title Suit No. 160 of 2008, for specific performance of contract.

9. From the allegation in the complaint petition, it is apparent that the informant has made grievance that even after making payment of Rs.12,00,000/-, the sale deed has not been executed by the accused persons. The informant has levelled allegation in the written report about committing breach of trust and cheating by the accused persons.

10. It is admitted position that informant has adopted civil remedy for his grievance by filing Title Suit No. 160 of 2006 for specific performance of contract which was finally disposed off by the court below on 30.6.2016. In that suit, prayer for specific performance of contract, was declined by the court in favour of the informant. The court below has however ordered the money decree for Rs.12,00,000/-

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along with compounding interest thereon @ 6 per cent per annum.

11. The counsel for the petitioner has specifically mentioned in paragraph-3 of the supplementary affidavit that Ravindra Narayan Singh has deposited the decree amount as per Judgment passed in Title Suit No. 108 of 2008 on 26.8.2016 in the court of Sub Judge-12, Bhagalpur, by a cheque payable in the name of opposite party No. 2 of the instant case, in compliance of the decree.

12. The counsel for the petitioner has relied upon a decision ***reported in AIR 1999, Supreme Court, 1480 (Nageshwar Prasad Singh @ Sinha Vrs. Narayan Singh and another)*** wherein the Hon'ble Supreme Court has held that suit for specific performance by complainant already pending before the Civil Court- Liability, if any, arising by breach of contract is civil in nature and not criminal- Criminal proceedings liable to be quashed**.** The counsel for the petitioner has also relied upon a decision reported in ***AIR 2006, Supreme Court 2780 (M/s. Indian Oil Corporation Vrs. M/s. NEPC India Ltd. & Ors.)*** wherein Supreme Court has deprecated a growing tendency to convert purely civil disputes into criminal cases. Similar view has been taken by the Hon'ble Supreme Court in ***AIR 2008 Supreme Court page 251 (Inder Mohan Goswami & Anr. Vrs. State of Uttaranchal & Ors.)***. Counsel for the petitioner has also relied upon a decision reported in ***AIR 2009, Supreme Court, 3191 (Dalip***

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Kaur & Ors. Vrs. Jagnar Singh & Anr.) wherein the Hon'ble Supreme Court has held that *"pure and simple breach of contract of sale does not constitute offence of criminal breach of trust or cheating. Fraudulent or dishonest intention at the time of making promise or representation is necessary to constitute offence"*

13. In such circumstances, from the facts of the case as stated above and the judgments of the Hon'ble Supreme Court as mentioned above, this Court is of the view that continuance of the Criminal Proceeding against the petitioners will be mere harassment to them and abuse of the process of the court.

14. Therefore, the impugned order dated 17.6.2008 passed by the Judicial Magistrate, Bhagalpur, in Kotwali (Barari) P.S. Case No. 735 of 2007 along with the entire criminal proceedings against the petitioners is hereby quashed.

15. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10/08/2017
Transmission Date	10/08/2017

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