IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22308 of 2016

Arising Out of PS.Case No. -98 Year- 2007 Thana -RAMPUR District- GAYA

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Manorma Devi wife of Sudama Sao, resident of Mohalla- Gewal Bigha, Durga Asathan, Teen Muhani, P.S.- Rampur, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar
2. Basudev Prasad son of Late Rama Nand Prasad, resident of Mohalla- Samir Takya, Maszid gali, P.S.- Rampur, District -Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : None

For the State : Mr. Jharkhandi Upadyay, A.P.P.

For the Opposite Party/s : Mr. Arbind Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-06-2017

Despite repeated calls, no body appears on behalf of the petitioner.

2. Heard learned counsel for the petitioner and learned counsel for the informant.

3. By invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), the present petition has been filed by the petitioner for quashing of the order dated 08.11.2012 passed by the learned Chief Judicial Magistrate, Gaya in Tr. No.2835 of 2014 arising out of Rampur P.S.

Case No.98 of 2007 whereby and whereunder cognizance has been taken under Sections 467, 468, 471, 406 and 420/34 of the Indian Penal Code and the petitioner and one Gautam Kumar Sinha @ Mantu have been summoned to face trial.

4. The allegations as alleged by the informant in the first information report is that on 30.04.2007 he entered into an agreement with one Munni Devi wife of Vijay Prasad Singh and Mantoo Kumar son of Vijay Prasad Singh to purchase a house standing over Khata No.2, plot no.23054/02, 15692/385(g) at Mohalla Geywal Bigha, Gaya against the consideration amount of rupees two lacs. It is alleged that the amount of rupees two lacs has been paid to the accused Munni Devi and Gautam Kumar Sinha @ Mantu in different installments but despite taking full and final payment they did not execute the deed in respect of transfer of the aforesaid land. It is alleged that on 02.08.2007 the informant came to know that Munni Devi and Gautam Kumar Sinha @ Mantu had gone to the office of the Sub. Registrar for execution of registered deed in favour of the petitioner Manorma Devi.

5. On the basis of the aforesaid allegation made in the FIR a police case was registered on 03.09.2007 and investigation was taken up. On completion of investigation, a report under Section 173(2) of the CrPC was submitted in the Court of Chief Judicial

Magistrate, Gaya vide charge-sheet no.189/12 on 31.08.2012 against Gautam Kumar Sinha @ Mantu and Manorma Devi under Sections 467, 468, 471, 406 and 420/34 of the Indian Penal Code. It was mentioned in the police report that since Munni Devi has already died she is not being sent up for trial.

6. On receipt of the police report after taking into consideration the materials available on record, the learned Magistrate took cognizance of the aforesaid offences against the petitioner and Gautam Kumar Sinha @ Mantu by order dated 08.11.2012. The aforesaid order dated 08.11.2012 is under challenge in the present application preferred under Section 482 of the CrPC.

7. It is submitted by the learned counsel for the petitioner that from perusal of the FIR itself it would be evident that no allegation whatsoever is made out against the petitioner. She is neither alleged to have cheated any one nor misappropriated any amount nor forged any document.

8. On the other hand, the contention of the learned counel for the informant is that the petitioner agreed to purchase the house standing over Khata No.2, Plot No.23054/02 and 15692/385(g) knowing fully well that the informant had already made full and final payment to the vendor for transfer of the said house. He submitted that the offences alleged are clearly attracted against the petitioner also.

9. Learned counsel for the State has supported the contentions advanced on behalf of the informant.

10. I have heard respective counsel for the parties and carefully perused the record.

11. In my considered opinion, launching of the prosecution case as against the petitioner is a gross abuse of the process of the court. There is no allegation that the petitioner dishonestly induced the informant for delivery of property or committed any offence of criminal breach of trust or cheated the complainant in any manner. There is also no allegation that the petitioner committed any act or omission which comes under the definition of forgery of valuable security, will etc. for the purpose of cheating nor there is any allegation against her of using as genuine a forged document.

12. Thus, in the facts and circumstances of the present case, the ingredients of the offences punishable under Sections 467, 468, 471, 406 and 420/34 of the Indian Penal Code are clearly wanting. Apparently, the learned Chief Judicial Magistrate has mechanically taken cognizance of the offence against the petitioner also.

13. In that view of the matter, I set aside the impugned order dated 08.11.2012 passed by the learned Chief Judicial Magistrate, Gaya in Tr. No.2835 of 2014 arising out of Rampur P.S.

Case No.98 of 2007 so far as the petitioner is concerned.

14. The petition stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	