

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 15321 of 2012

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

- =====
1. Dhanrajo Devi, W/O Late Harihar Singh
 2. Om Prakash Singh, S/O Late Harihar Singh, both resident of Haridhan Dham, Ashokapuri Khajpura, A - 36, P.S. - Shastri Nagar, District - Patna
 3. Dhananjay Kumar Singh @ Pintu, S/O Suresh Kumar Singh, Resident of Village - Babupur, P.S. – Naubatpur, District - Patna At Present Khagaul Road Batala Pipe Garikhana, P.S. - Khagaul, District - Patna

.... Petitioners

Versus

1. The State of Bihar
2. Binod Kumar Gupta, S/O Late Kishori Lal Gupta, Resident of Mohalla - West Patel Nagar Kamakhya Path, P.S. - Shastri Nagar, District – Patna - 800023

.... Opposite Parties

=====

Appearance :

For the Petitioners : Mr. Sunil Kumar Pathak, Advocate

For the Opposite Parties : Mr. Manoj Kumar Jha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date: 05-09-2017

Heard learned counsels for the parties.

2. This application, under Section 482 Cr.P.C., is for quashing the order dated 26.09.2011 passed by Sri Amit Raj, learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 2079 (C) of 2011 whereby the learned court below has found prima facie case made out under Sections 323, 504 and 420/34 of the Indian Penal Code against the petitioners and has ordered for issuance of summon to face trial.

3. Submission of the learned counsel for the petitioners is that a bare perusal of the complaint petition would reveal that the matter is of purely civil dispute, arising out of a contract, between the parties, hence,



criminal prosecution is an abuse of process of the Court.

4. To counter the aforesaid submission, contention of the learned counsel for the opposite party no. 2, who is complainant of the aforesaid case, is that civil proceeding is no bar for criminal prosecution, if the ingredients of offences are disclosed. Learned counsel has placed reliance on case of **Ram Nath Ray @ Ram Nath Rai @ Ram Nath Prasad & Anr. vs. The State of Bihar & Anr.** reported in **2017(1) PLJR 965.**

5. Besides the petitioners against two more persons, the aforesaid complaint case was filed. However, the court below did not issue summon against co-accused Brijeshwar Nath Tiwari. Co-accused Mithilesh Singh has not challenged the impugned order.

6. Allegation against the petitioners is that the complainant had purchased the referred land through registered sale deed from petitioner no. 1 Dhanrajo Devi. The said transaction was materialized through petitioner no. 3 Dhananjay Kumar Singh and petitioner no. 2 Om Prakash Singh is son of petitioner no. 1 Dhanrajo Devi. Allegation is that at the time of transaction, the accused persons had ensured that the land is free from all the defects of title and the two sale deeds were executed after receipt of full consideration money by petitioner no. 1 Dhanrajo Devi. When the complainant went to start construction some other persons, not named in the complaint petition, raised objection,



hence, the complainant found himself cheated.

7. Contention of the learned counsel for the petitioners is that the transferred land was purchased by petitioner no. 1 Dhanrajo Devi through two registered sale deeds executed by Loh Purush Sardar Patel Sahkari Grih Nirman Samiti Ltd., Purandarpur, Patna 1, in favour of petitioner no. 1 Dhanrajo Devi on 14th December, 1994 vide Annexure-2 series. Thereafter, petitioner no. 1 Dhanrajo Devi was mutated in the government records and she was paying the rent and getting the receipt vide Annexure-3 series. Therefore, prima facie, the matter appears to be of bona fide transaction. Mere bald allegation that some unknown person protested against the possession of the purchaser would not raise criminal liability against the vendor unless it is established that at the time of initial agreement, the vendor was conscious that he/she was going to defraud the complainant.

8. The material available on the record of this case would show that the petitioner no. 1 Dhanrajo Devi was purchaser of land transferred by her and after going through the title deed of petitioner no. 1 Dhanrajo Devi, the complainant has purchased the same. Other allegations of commission of assault by petitioner no. 2 Om Prakash Singh are just concocted one to harass the petitioners.

9. On perusal of the complaint petition, it is evident that petitioner no. 3 Dhananjay Kumar Singh has, allegedly, brought the



vendor and the purchaser/closer and after verification of title of the deed of the vendor, the parties entered into a sale transaction which was performed through registered sale deed. There is no allegation that the vendor has already sold the said land to any other person nor any material was brought on the record of complaint case that the unknown person, who was protesting against the possession of the complainant, had any document of title in respect of the transferred land.

10. Therefore, prima facie, there is no material to disclose the ingredients of cheating against the petitioners. Apparently, the matter is of civil dispute and squarely covered by the judgment of the Hon’ble Apex Court in **Mohammed Ibrahim & Ors. vs. State of Bihar & Anr.** reported in **2009(8) SCC 751**. Hence, the criminal prosecution of the petitioners is an abuse of process of the Court which cannot be allowed.

11. Accordingly, the entire criminal prosecution stands quashed and this application is allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	09.09.2017
Transmission Date	09.09.2017

