

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6762 of 2012

Arising Out of Complaint Case No. -1106 Year- 2010 Thana -Maharajganj District- SIWAN

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Mostt. Sunita Devi W/o Late Shailendra Singh, resident of village- Sihauta, Police Station- Maharajganj, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar
2. Pradeep Kumar S/o Sri Gopaljee Prasad, resident of village- Mohan Bazar, Police Station- Maharajganj, District- Siwan.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : M/s Bamdeo Pandey, Jitendra Pandey and
Ram Narain Singh, Advocates

For the Opposite Party/s : Mr. Amrendra Kr. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 31-08-2017

1. Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 20.09.2011 passed by the learned Judicial Magistrate 1st Class, Siwan in Complaint Case No. 1106 of 2010 whereby and whereunder the learned Magistrate finding *prima facie* case for the offence under section 418 of the Indian Penal Code, summoned the petitioner.

3. The facts, in brief, is that the opposite party no. 2 had filed a complaint case on the file of learned Chief Judicial Magistrate,



Siwan alleging *inter alia* that this petitioner entered into an agreement to execute a sale deed with respect to three shops standing over Plot no. 383 and 2055 for a total consideration amount of Rs. 7, 30,000/-. It is alleged that the complainant, as per the agreement, paid an amount of Rs.4,80,000/- on different occasions in presence of witnesses as earnest money for executing sale deed but the petitioner in spite of the repeated demand, did not execute the sale deed and thereby cheated the complainant and also committed breach of trust.

4. The learned counsel for the petitioner submits that there was absolutely no agreement to sell the shop. The complainant has filed this case with a purpose to grab her landed property. The complainant was never put in possession over any portion of land in question. There is absolutely no chit of paper to show any payment by the complainant or any paper in support of alleged agreement. The dispute between the parties is purely a civil dispute and so, no offence under section 418 of the India Penal Code is made out. The learned Magistrate has passed the order in mechanical manner without applying judicial mind and so, the order is fit to be quashed.

5. The learned Additional Public Prosecutor opposed the submission.

6. On perusal of complaint petition and impugned order, I find that the complainant claims his right on the basis of oral



agreement which is being denied by the petitioner. The dispute between the parties appears to be a civil dispute and the complainant has remedy to get his agreement enforced by filing a suit for specific performance of contract.

7. In a three-Judge Bench decision of the Supreme Court in ***Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh & Anr. [(1998) 5 SCC 694]***, a similar question fell for consideration and relying upon illustration (g) of section 415 IPC, it was held that the agreement for sale of land and the earnest money paid to the owner as part of consideration and possession of land and the subsequent unwillingness of the owner to complete the same, gave rise to a liability of civil nature and the criminal complaint was, therefore, not competent. In ***Dalip Kaur & Ors. Vs. Jagnar Singh & Anr. [(2009) 14 SCC 696]***, the question for determination before the Supreme Court was whether breach of contract of an agreement for sale would constitute an offence under section 406 or section 420 IPC. After examining the fact of the case and the relevant sections of the IPC, the Supreme Court held that an offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making of promise or representation. A pure and simple breach of contract does not constitute the offence of cheating. It further held that if the dispute between the parties was essentially a civil dispute



resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating or criminal breach of trust.

8. In the fact and circumstances of the case, the order dated 20.09.2011 passed by the learned Judicial Magistrate 1st Class, Siwan in Complaint Case No. 1106 of 2010 taking cognizance for the offence under section 418 of the Indian Penal Code and the criminal prosecution of this petitioner on the basis of said cognizance order, is hereby quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10.09.2017
Transmission Date	10.09.2017

