

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27361 of 2011

Arising Out of Complaint Case No. -797 Year- 2010 District- JEHANABAD

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1. Vimal Sharma, son of Late Shyam Nandan Singh,
2. Surendra Kumar S/O Late Mahendra Singh,
3. Mithlesh Kumar S/O Late Mahendra Singh,
4. Nagendra Kumar S/O Mahendra Singh
5. Satendra Kumar S/O Bali Ram Sharma,
6. Awadhesh Kumar S/O Late Shyam Nandan Sharma,
7. Raghwendra Sharma S/O Shashi Bhushan Sharma,

All resident of village Kako, P.S. Kako, District Jehanabad.

.... Petitioners

Versus

1. The State of Bihar
2. Binod Yadav, son of Sri Ram Swarup Prasad Singh, resident of Village Kako, P.O.+P.S.- Kako, District Jehanabad

.... Opposite Parties

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Appearance:

For the Petitioners : Mr. Jitendra Kumar Singh,
Mr. Rajiv Kumar, Advocates.
For the State : Mr. Ajay Kumar-2, APP
For the O.P. No. 2 : Mr. Sunil Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 19-04-2017

Heard learned counsel for the petitioners, learned APP for the State and learned counsel for the opposite party no. 2.

2. The present application has been filed for quashing the order dated 14.02.2011 passed by the Judicial Magistrate 1st Class, Jehanabad, taking cognizance against the petitioners for the offences under Sections 420 and 406 of the Indian Penal Code in Complaint Case No. 797 of 2010 corresponding to Trial No. 1699 of 2010.

3. The short facts, according to the prosecution case, are



that the opposite party no. 2 made payment of an advance amount of Rs. 44,000/- to the petitioner no. 1 for purchase of 6.25 decimal of land of Khata No. 2234/2098, Plot No. 6446/3737. His sale deed was duly prepared and presented for registration on 29.04.2010 in the Registry Office but owing to death of one of the staff members, the work of the Registry Office was suspended for the day. Over the next few days, the petitioner no. 1 did not go to the Registry Office for registration of the sale deed. On 04.05.2010, the opposite party no. 2 came to know that the accused persons had gone to the Registry Office for registration of the said land in the name of petitioner nos. 2, 3, and 4 and found the accused persons present in the registry office. On protest by the opposite party no. 2 against such registration, the accused persons expressed that they would nevertheless go ahead and were not willing for the transfer of the land in favour of the opposite party no. 2.

4. Learned counsel for the petitioners submits that the thrust of the accusation is against petitioner no. 1 who is said to have accepted the advance money from opposite party no. 2 for transfer of the land. The Petitioner No. 1 has since died and his name has been expunged from the present application.

5. As regards the remaining petitioners, learned counsel submits that no offence whatsoever is made out and continuance of the criminal prosecution against them would amount to an abuse of the process of court.



6. Learned counsel for the petitioners submits that the ingredients of the offences under Sections 420 and 406 of the Indian Penal Code are not made out against the petitioner nos. 2, 3 and 4 who have admittedly not accepted any amount at all from the opposite party no. 2, and they were merely bone fide purchasers of the land. As regards the petitioner nos. 5, 6, and 7, no allegation at all has been made against them and it has merely been stated by the opposite party no. 2 that they were present at the house of the petitioner no. 1 and told him that the latter was not at home at the time. It is further submitted that on one hand the opposite party no. 2 has filed the instant Complaint Case No. 797 of 2010 and on the other hand, he has filed Compulsory Registration Case No. 20/DM/2010 under Section 73 of the Registration Act, 1908 as father and natural guardian on behalf of his three minor sons. It is therefore submitted that the opposite party no. 2 has merely tried to put pressure by filing the criminal complaint while simultaneously availing of civil remedy. It is further submitted on the basis of the objection filed by the petitioner no. 1 in Compulsory Registration Case No. 20/DM/2010 that he had not received even a single farthing from the opposite party no. 2, and execution of the sale deed was an act of fraud and forgery on the part of the opposite party no. 2 and others. In this regard, the petitioner no. 1 had filed Kako P.S. Case No. 146 of 2010 pursuant to which opposite party no. 2 had remained in jail custody.



7. Learned counsel for the opposite party no. 2, on the other hand, submits that petitioner nos. 2 to 7 are liable to be proceeded against in the criminal complaint inasmuch as they were well aware of the fact that petitioner no. 1 had accepted an advance of Rs. 44,000/- from opposite party no. 2 despite which they fraudulently conspired in having the sale deed executed in favour of petitioner nos. 2, 3, and 4.

8. Having heard the parties and having regard to the materials on record, this Court finds merit in the application. A perusal of the complaint discloses that the thrust of the accusations of having received the advance money of Rs. 44,000/- is unequivocally against the petitioner no. 1 who however has since died and his name has been expunged from the present application. The petitioner nos. 2 to 7 cannot be said to have deceived the opposite party no. 2 and thereby fraudulently or dishonestly induced him to deliver any property, or to do or omit to do any other acts contemplated in Section 415 of the Indian Penal Code, and hence Section 420 of the Indian Penal Code is not attracted. Similarly, the petitioner nos. 2 to 7 it cannot be said to have been entrusted with property of the opposite party no. 2 which they dishonestly misappropriated or converted to their own use etc. thus rendering them liable for criminal breach of trust u/s 405 of the Indian Penal Code, and hence Section 406 is also not attracted against the petitioner nos. 2 to 7.

9. In the above view of the matter, this Court is of the view



that continuance of criminal proceedings against the petitioner nos. 2 to 7 would amount to abuse of process of court. The cognizance order dated 14.02.2011 passed by the Judicial Magistrate 1st Class, Jehanabad in Complaint Case No. 797 of 2010 corresponding to Trial No. 1699 of 2010 is accordingly set aside and the application is allowed.

10. Registry is directed to send back the lower court records without any delay.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.04.2017
Transmission Date	25.04.2017

