

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19221 of 2013

Arising Out of PS.Case No. -1646 Year- 2012 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

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Hemant Kumar Late Kali Narayan Village - Sirsa Birani, P.O. - Sirsa Birani @
Madhusudan Parki, P.S. - Lalganj, Distt. - Vaishali

.... Petitioner

Versus

1. State Of Bihar
2. Rajesh Kumar Raju Late Lal Babu Rai Bagmali, Near Sita Chowk, P.S. -
Hajipur, Distt. - Vaishali

.... Opposite Party

with

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Criminal Miscellaneous No. 49847 of 2013

Arising Out of PS.Case No. -1646 Year- 2012 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

- =====
1. Sumit Kumar Son Of Hemant Kumar Resident Of Village- Madhusudan Pakri,
P.S.- Lalganj, P.O.- Manikpur Pakri, District- Vaishali. Presently Residing At
Flat No.- 584, Pocket- 16, Sector- 3, Dwarka, New Delhi- 110078
 2. Sarita Nath Wife Of Hemant Kumar Resident Of Village- Madhusudan Pakri,
P.S.- Lalganj, P.O.- Manikpur Pakri, District- Vaishali.
 3. Ina Wadhwa @ Ina Wife Of Saket Kumar Resident Of Flat No.- 584, Pocket-
16, Sector- 3, Dwarka, New Delhi- 110078

.... Petitioners

Versus

1. The State Of Bihar
2. Rajesh Kumar Raju Son Of Late Lalbabu Rai R/O Mohalla- Bagmali, Near Sita
Chowk, P.O.- Hajipur P.S.- Hajipur Town, District- Vaishali

.... Opposite Party

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Appearance :

(In Cr.Misc. No.19221 of 2013)

For the Petitioner : Mr. Mr. S.K.Lal
Mr. Pritish Kumar Lal

For Opposite Party No. 2 : Mr. Sunil Kumar

For the State : Mr. Shyam Bihari Singh, APP

(In Cr.Misc. No.49847 of 2013)

For the Petitioners : M/s Jagjit Roshan, A Paul, Rajeev Ranjan
And Mr. Rakesh Roshan Singh

For the Opposite Party : Mr. Mushtaque Alam, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR



ORAL JUDGMENT**Date: 02-11-2017**

Both the Cr. Misc. No. 19221 of 2013 and Cr. Misc. No. 49847 of 2013 arising out of the same impugned order of taking cognizance so they are being disposed of together by this common judgment after admitting Cr. Misc. No. 49847 of 2013.

2. Heard learned Counsel for the petitioners, learned Counsel for the State as well as the learned Counsel appearing on behalf of Opposite party No. 2.

3. The petitioners of both the Cr. Misc. applications by filing these applications under Section 482 of the Code of Criminal Procedure seek quashing of the cognizance order dated 3.9.2012 passed by the learned CJM Vaishali in Complaint Case No. 1646 of 2012, thereby taking cognizance of the offence under Sections 406 and 120B of the IPC.

4. The brief fact giving rise to the case is that Opposite party No. 2 of both the cases, the complainant of the case, lodged a complaint that all the accused persons coming in conspiracy intended to sell their land measuring 47 Katha in total, the details of which has been mentioned in the complaint. After due negotiation the complainant agreed to purchase the same at the rate of One Lakh One Thousand rupees per katha, means for total consideration of Rs. 47,47,000/- for the entire land. After finalization of deals an agreement for sale was also executed on 7.9.2011 and Rs. 1,51,000/- was paid by the complainant to Hemant Kumar, the petitioner of Cr. Misc. No. 19221 of 2013, as advance money and one



unregistered deed of agreement for sale was also executed, but one of the conditions mentioned in the deed of the agreement for sale was that the purchase was to be done within three months though it was the understanding that the total consideration money will be paid within eleven months and thereafter the sale deed would be executed. The complainant transmitted to the account of the accused Rs. Two Lakhs and on 15.9.2011 and further Rs. Three Lakhs transmitted, on 16.8.2011 Rs. One Lakh and on 29.11.2011 Rs. Six Lakhs was transmitted and remaining amount of Rs. 33,97,000/- was to be paid within eleven months. The complainant received a legal notice on 1.12.2011 on behalf of Hemant Kumar giving notice that the period for executing the sale deed after paying the consideration money was going to expire in near future and if the sale deed is not get executed the money would be forfeited. The complainant sent a reply of the notice to the accused, but it was not received. Again he personally met and asked him to execute the sale deed after taking the remaining consideration amount but he refused.

5. Learned Counsel appearing on behalf of the petitioner submits that no offence as disclosed under Sections 406 and 120B of the IPC is made out even if the entire allegation as alleged in the complainant is taken into entirety. It was purely a civil transaction and there was no element of any crimination intention or breach of trust rather as per the deed of agreement for sale, Annexure 2, not denied by the complainant, the complainant was required to pay the entire amount within three months from the date of execution of the deed of agreement for sale. The



deed of agreement for sale was executed on 7.9.2011 and three months expired on 6.12.2011, but no further consideration amount was paid within that period. Therefore, the sale deed was not executed and the petitioner has also filed a Title Suit that the complainant has failed to pay the entire consideration money within the stipulated period as per the deed of agreement for sale, so the money given in advance got forfeited and that matter is still subjudiced.

6. Learned Counsel for the petitioner has placed reliance on the case of ***Ram Biraji Devi & anr. Vs. Umesh Kumar Singh & anr. 2006(3) PLJR 190 (SC)***. Learned Counsel for the petitioner submits that in the said case also the complainant paid a sum of Rs. 80,000/- to the appellant as consideration amount relating to sale price of the plot but as per the allegation the appellant failed to execute the agreement so a criminal complaint was filed. The Apex Court held that there is not even a whisper of allegation or averments made in the complaint constituting an offence for which the cognizance has been taken by the learned Magistrate. In the said case cognizance was taken under Sections 406, 419, 420 and 120B of the IPC.

7. Learned Counsel for the petitioner further places reliance on the case of ***Santosh Kumar Sinha vs. State of Bihar & others, 2013(1) PLJR 378*** and submits that the facts of the case are almost similar to the present one. It is submitted that in this case also there was an agreement for sale in favour of the complainant and some advance money was paid to the accused but total consideration money was to be paid within a period



of seven months, but after that period the accused persons refused to take remaining amount and also refused to execute the sale deed in favour of the complainant. A coordinate Bench of this Court held that in such backdrop of the fact no criminal offence is made out and it is a civil dispute.

8. Learned Counsel for the petitioners of Cr. Misc. No. 49847 of 2013 adopts the same argument and in addition further submits that there is no any allegation against these petitioners either of entering into agreement for sale with the complainant, or receiving any money or any money was paid to them. They have been implicated only on the basis of being family members of Hemant Kumar.

9. However, learned Counsel appearing on behalf of the Opposite party No. 2 submits that there was an agreement for sale but prior to expiry of the date a notice was issued to the complainant by Hemant Kumar, though orally it was agreed by both sides for making payment of consideration money within a span of eleven months. However, the period for paying the consideration money was recorded in the agreement as three months. So it is a case of criminal breach of trust as there was entrustment of advance money with Hemant Kumar, the land owner.

10. Having considered the rival submissions of both sides and on perusal of record in particular the averments made in the complaint that there was an agreement for sale of the land in question in between both sides i.e. the petitioners and the Opposite party No. 2, the complainant.



The complainant intended to purchase 47 Katha from Hemant Kumar, so an unregistered deed of agreement for sale was executed by Hemant Kumar on 7.9.2011. The said deed is Annexure 2 of the application. The existence of this deed is not denied by other side. There is specific condition mentioned in the said deed that the complainant, the purchaser, shall deposit the total consideration money within three months from the date of entering into agreement, otherwise the advance money deposited by the purchaser would be forfeited and if the land owner fails to execute the sale deed within three months after paying all the consideration money then the purchaser would have the right to get the sale deed executed through the Court. It is also an admitted position that the complainant did not pay consideration money within the stipulated period of three months from the date of execution of the deed of agreement for sale, so it cannot be inferred that the petitioner Hemant Kumar or the other accused had any criminal intent of misappropriating the advance amount deposited by the complainant, rather there is one of conditions in the agreement deed that if the purchaser fails to pay the consideration money within three months the advance paid by the purchaser would be forfeited. This is also apparent that before expiry of the period of three months petitioner Hemant Kumar had sent a notice to the complainant to pay the consideration money within time and to get the sale deed executed, despite that the condition was not fulfilled, so the dispute appears civil in nature and no ingredient of any criminal breach of trust is made out against Hemant Kumar and rest other petitioners of Cr. Misc. No. 49847 of 2013,



rather there was no agreement in between the complainant and the petitioner, nor any part of consideration money was received by them. There is complete absence of any fact showing in the complaint that the accused at the very inception of agreement had any criminal intention either to cheat the complainant or misappropriate the money paid to him in advance as part payment of the consideration money because as per one of the conditions contained in the deed of agreement for sale the total consideration money was to be paid within three months but admittedly the same was not paid within the stipulated period. So finding no ingredient of the offence of criminal breach of trust against the accused persons, the entire criminal proceeding inclusive of the cognizance order dated 3.9.2012 pending against them in the court of learned CJM Vaishali with respect to Complaint Case No. 1646 of 2012 is hereby quashed.

11. Both the applications stand allowed.

(Arun Kumar, J.)

Snkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07.11.2017
Transmission Date	07.11.2017

