

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7620 of 2017

Arising Out of PS.Case No. -652 Year- 2016 Thana -PURNIA COMPLAINT CASE District-
PURNIA

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1. Sudhir Kumar Singh son of Late Hriday Narayan Singh
 2. Adhir Kumar Singh son of Late Hriday Narayan Singh
 3. Saurabh Anand son of Sri Sudhir Kumar Singh

All residents of Muhalla Shivpuri Bhatta Bajar, P.S.- Khajanchihat
(Sahayak), District- Purnia.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Vijay Kumar Singh son of Late Raj Bihari Singh, resident of Muhalla Shivpuri
Bhatta Bajar, P.S.- Khajanchihat (Sahayak), District- Purnia.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Vikramdeo Singh, Advocate
	:	Mr. Sadanand Ray, Advocate
For the Opposite Party/s	:	Mr. Ajay Kumar Singh, Advocate
For the State	:	Mr. Anil Kumar Singh-1, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 30-10-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed by the petitioners for quashing of the order dated 26.09.2016 passed by the learned Additional Chief Judicial Magistrate, Purnia in Complaint Case No.652 of 2016 whereby after taking cognizance of the offences punishable under Sections 406 and 420 of the Indian Penal Code, the petitioners have been summoned to face trial.

2. As per complaint, the complainant and the accused persons were known to each other from before. The complainant has



got two acres twelve decimals of land in Mouza- Madhopara, District Purnia. The accused persons being fully aware that there is some dispute over the land, agreed to purchase the land. The cost of the entire land was fixed at rupees thirty three lacs. Thereafter, an agreement of sale was signed in which the complainant and his partner Md. Anwar are the first party and the accused persons are second party. Out of total consideration amount, rupees twelve lacs was paid to the complainant as advance. As per agreement of sale dated 18.02.2010, it was agreed that after disposal of the dispute relating to land and within six months, the land will be registered in the name of the accused persons or in the name of persons suggested by the accused persons. It has been alleged that the accused persons got instituted one civil suit and again the accused persons in connivance with defendants of the suit got registered sale deed executed in respect of half portion of the suit land in favour of doctor Noor Akhtar and his wife Afsana Khatoon through sale deed dated 18.03.2011 and 30.03.2011. They stated that when the dispute would be over regarding the land, the balance full price of the land would be paid to the complainant. It has been alleged that the accused persons breached the trust and on the basis of the agreement of sale dated 18.02.2010, they gave threatening to file a false case against the complainant. The further allegation of the complainant is that again



the accused persons put pressure upon the complainant to execute sale deed in favour of third person and when the complainant asked for consideration money of earlier sale deed they threatened him. They also took signature of Md. Anwar on five blank-sheet of papers without disclosing the same to the complainant on the pretext that they would use the same for adducing evidence in pending civil suit, but subsequently the complainant and Md. Anwar came to know that the accused persons have utilized those papers showing Md. Anwar as a witness on certain sale deeds.

3. The complainant was examined on solemn affirmation and apart from the complainant, three enquiry witnesses were examined under Section 202 of the CrPC whereafter the impugned order dated 26.09.2016 was passed by the learned Additional Chief Judicial Magistrate, Purnia whereby the petitioners have been summoned to face trial.

4. It is submitted by the learned counsel for the petitioners that the impugned order has been passed without application of judicial mind. He submitted that even admitted facts of the case do not attract ingredients of the offences punishable under Sections 406 and 420 of the Indian Penal Code. The admitted case of the complainant is that he had received rupees twelve lacs as advance payment from the petitioner for executing sale deed in favour of the accused persons.



However, the sale deed in respect of the land was executed in favour of one Noor Akhtar and his wife Afshana Khatoon after receiving consideration amount from them and such an act of the complainant would make out a case of criminal breach of trust and cheating as against the complainant and not against the accused persons. He submitted that the allegations made in the complaint are baseless and unfounded. He submitted that after having coming to know that after entering into an agreement with petitioner no.1, the complainant stealthily has sold the same piece of land to doctor Noor Akhtar and his wife, he filed a complaint case vide Complaint Case No.334 of 2016 in the court of Chief Judicial Magistrate, Purnia and the institution of the present case is just in order to create defence in the said case and is an abuse of process of the court.

5. On the other hand, learned counsel for the complainant submitted that the allegations made in the complaint do attract ingredients of the offence alleged. He submitted that the sale deed was executed in favour of doctor Noor Akhtar and his wife without any payment on 18.03.2011 and 30.03.2011 on the assurance of the accused persons that they would make balance payment for the transferred land, but they failed to keep up their promise. He contended that, as a matter of fact, Complaint Case No.334 of 2016, has been brought by the petitioner in order to save himself from being



prosecuted in the present case.

6. I have heard learned counsel for the parties and perused the materials available on record. I find substance in the submissions made by the learned counsel for the petitioners.

7. Complaint Case No.334 of 2016 was filed by petitioner no.1 against the complainant of the present case on 16.02.2016 whereas the instant complaint has been filed by the complainant on 08.04.2016. Apparently, the present case has been filed by the complainant much after the filing of Complaint Case No.334 of 2016 in order to create defence for himself in the complaint case filed by petitioner no.1. It is not disputed by the complainant that he had received rupees twelve lacs as advance for selling the land to petitioner no.1 and an agreement to that extent was entered into between the parties. As per complaint case, sale deeds were executed on 18.03.2011 and 30.03.2011 in favour of doctor Noor Akhtar and his wife by the complainant and if they had made no payment then the complainant was supposed to take necessary action for realization of money or to cancel the sale deeds executed in their favour, but no action for cancellation of sale deeds or for recovery of money from doctor Noor Akhtar and his wife or against the petitioners was taken by the complainant for nearly five years and only after petitioner no.1 filed the complaint case against the complainant making out an



allegation that he stealthily sold same piece of land for which he had taken advance from petitioner no.1 to doctor Noor Akhtar and his wife, the instant complaint has been instituted against the petitioners.

8. In the given facts and circumstances of the case, I am of the opinion that the dispute raised is purely civil in nature and initiation of a criminal proceeding is clearly an abuse of the process of the court.

9. In that view of the matter, in order to secure the ends of justice, the impugned order dated 26.09.2016 passed in Complaint Case No.652 of 2016 and the entire proceedings of the aforesaid complaint case are hereby quashed.

10. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

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

