

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20964 of 2013

Arising Out of PS.Case No. -419 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Smt. Sarita Singh W/O Mahesh Singh @ Mahesh Kumar Singh R/O Vill -
Ajwan, P.S. - Naubatpur, Dist - Patna; At Present Residing At Mohalla -
Chiranyatad, Near Nationalised High School (TPS College), P.S. -
Kankarbagh, Town And Dist - Patna

.... Petitioner

Versus

1. The State Of Bihar
2. Abhishek Singh S/O Late Ramesh Prasad Singh R/O Mohalla -
29/O3/12, S.K. Puri, P.S. - S.K. Puri, Town And Dist. - Patna

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Abhimanyu Sharma, Advocate
Mr. Prakirti Sharma, Advocate
For the State : Mr. P.K.Chaurasia, APP
For the Opposite Party No.2 : None.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

6 22-06-2017

Heard both sides.

2. The petitioner has filed this application under
Section 482 of the Cr.P.C. for quashing the order dated 11.02.2013
passed by Judicial Magistrate, Ist Class, Patna in Complaint Case
No.419C of 2012 whereby and whereunder cognizance of the
offence under Section 406 and 417 of the IPC has been taken
against the petitioner.

3. The facts in brief is that this petitioner
negotiated to sell land measuring one bigha 14 katha at the rate of
Rs.68,000/- per katha and after receiving Rs.3,00000/- as an



earnest money executed a deed of agreement for sale on 20.11.2010. The petitioner further executed another deed of agreement for sale of her land measuring one bigha 14 katha 10 dhurs along with tress standing thereon at rate of Rs.92,000/- per katha. The negotiation was finalized in presence of accused nos.2 and 3 cited in the complaint petition. The petitioner received altogether 20,15,000/- on different dates under her signature of over leaf of the first page of the agreement. The petitioner further received Rs.29,15,000/- from the complainant in presence of accused nos.3 and 4. The complainant requested the petitioner to execute sale deed as per terms of deed of agreement on receipt of balance of consideration money but this petitioner did not execute the sale deed. The complainant served a legal notice on 20.04.2011 but of no avail. The complainant subsequently got information that the major portion of land under the deed of agreement has been sold to different persons. The petitioner in spite of repeated demand did not execute the sale deed and thereby usurped the money given to her against the deed of agreement. The court below after recording the statement of complainant and other witnesses found prima face under Sections 406 and 417 of the IPC and took cognizance of offence and ordered for issuance of summons for her appearance.



4. The learned counsel or the petitioner submits that the husband of the petitioner is a reputed businessman of this city. In course of business he had gone to Kolkata where he was tested by West Bengal police on the false charge of helping the Nuxal group. The petitioner was in need of money and so he requested accused nos.3 and 4 for arranging money on loan to meet the expense on litigation at Kolkata. The complainant gave the amount in question as loan on getting two deeds of agreement executed in his favour for the security of the loan amount. The husband of the petitioner after return from Kolkata started making payment of loan amount in instalment. The complainant used to receive the amount under the signature of this petitioner on the reverse page of both the deeds. The entire amount was paid to the complainant from 11.11.2011 to 02.06.2012 and after full and final payment both the agreements paper were handed over to the petitioner.

5. Alternatively he submits that from the allegation no offence under Section 420 and 417 of the IPC is make out. By executing the deed of agreement, she allegedly agreed to sale the land in favour of the complainant after receiving the entire consideration amount. The complainant had/has remedy to get the sale deed executed as per terms of agreement by filing a



suit for specific performance of contract. This is purely a dispute of civil nature and no offence as alleged is made out and so the cognizance order is fit to be quashed. He further referred the order dated 04.06.2013 passed by the Sessions Judge, Patna in ABP No.1416 of 2013 to show that the complainant fairly admitted the fact that he has already received the entire consideration money and he had no grievance against the petitioner and she was granted anticipatory bail considering the said fact.

6. The learned APP however, opposed the submissions and submits that besides the civil remedy the criminal court has also jurisdiction to proceed with this case as the petitioner has usurped his money.

7. No body appears on behalf of Opposite Party No.2 in spite of repeated calls although he has filed a counter affidavit advertng the case of petitioner.

8. On perusal of impugned order as well as annexures enclosed with the application, it appears that the complainant had received the money given against the agreement paper on different occasion. He has put the signature on the reverse pages of both the agreement deeds. The Opposite Party no.2 in his counter affidavit has not denied this fact rather admittedly that the petitioner fraudulently deposited the said



amount in his bank account through RTGS and obtained his signature on agreement paper. By taking money from the petitioner the complainant has waved his right to get the sale deed executed in terms of said agreement. This is purely a civil dispute and he has remedy to get the document executed through the process of the court on proving his case of agreement.

9. In view of above discussions, I find that the impugned order taking cognizance against the petitioner is not sustainable. Accordingly the impugned order dated 11.02.2013 passed in Complaint Case No.419C of 2012 by Judicial Magistrate Ist Class, Patna is quashed and this petition is accordingly allowed.

(Sanjay Kumar, J)

B.Kr./-

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