IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49540 of 2013

Arising Out of PS.Case No. -252 Year- 2013 Thana -PATNA COMPLAINT CASE District- PATNA

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Devendra Kumar S/O Late Gopal Prasad Mohalla- Sandalpur, P.S.- Sultanganj, Distt.- Patna

.... Petitioner

Versus

1. The State Of Bihar
2. Krishna Kumar son of late Dinanath Prasad, resident of Mohalla- New Arfabad Colony, P.S.- Alamganj, District- Patna

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Indish Kumar, Advocate
For the Opposite Party/s : Mr. Abhay Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 22-06-2017

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 14.08.2013 passed by the learned Judicial Magistrate, 1st Class, Patnacity in C. A. No. 252 of 2013 whereby the petitioner has been summoned to face trial for the offence punishable under Section 420 of the Indian Penal Code.

2. The prosecution case, according to the complainant, is that pursuant to an agreement to sell in respect of two kathas of land, an amount of Rs.5,00,100/- was paid to the petitioner by way of advance. Since the complainant came to know that the property in question was *gairmajarua* land and, thus, he demanded

back the money advanced to the petitioner. The petitioner returned Rs.2,99,000/- in installments to the complainant and promised to return the balance amount of Rs.2,02,000/-. It is alleged that the petitioner again took a loan of Rs.1,03,000/- from the complainant and promised that he would return the loan amount within two months. It is alleged that the petitioner called the complainant with the original deed of agreement to sell on 14.12.2012 to his house on the pretext of returning the balance amount to the complainant and when the complainant along with the witnesses reached to the house of the petitioner on 14.12.2012, he asked for the original agreement deed and, after obtaining it from the complainant, he tried to tear the same even without paying the balance amount. Then, the complainant took back the agreement paper and ran away from the house of the petitioner. It is further alleged that the complainant sent a legal notice to the petitioner on 18.12.2012 and demanded back the balance amount, but he did not submit any reply to the notice sent to him.

3. On the basis of the aforesaid allegations the complainant alleged that he has been cheated by the petitioner.

4. The statement of the complainant was recorded on solemn affirmation and, in course of inquiry, three witnesses, namely, Sanjay Kumar, Sunil Kumar and Ajay Kumar were examined under Section 202 of the Code of Criminal Procedure. Thereafter, by order

dated 14.08.2013, the petitioner has been summoned to face trial for the offence punishable under Section 420 of the Indian Penal Code. The said order, dated 14.08.2013, is under challenge in the present application.

5. Learned counsel for the petitioner submitted that the complaint case has been maliciously instituted by the complainant in order to illegally extract money from the petitioner. He submitted that the property in question is *raiyati* land. He submitted that as per the agreement to sell, the consideration of the property was Rs.17,50,000/- out of which the complainant had advanced only Rs.5,01,000/-. The balance amount was required to be paid within three months failing which the amount paid in advance was to be forfeited. He submitted that since the complainant failed to pay the balance amount within the stipulated period, the petitioner was not under any legal obligation to refund the amount paid in advance. He submitted that since the complainant was unable to pay the balance amount, in fairness of the matter, the petitioner returned the advance amount taken from the complainant. However, the complainant was not satisfied with the refund of the principal amount given to the petitioner as advance. He demanded for interest over the amount advanced. He started putting pressure upon the petitioner. He submitted that in order to blackmail the petitioner, he has launched the

instant false and frivolous case.

6. *Per contra*, learned counsel for the complainant/opposite party no. 2 submitted that it is a case in which the complainant came to know that the property for which negotiation was made by the petitioner was *gairmajarua* land and, thus, the complainant did not pay the balance amount. He contended that the intention of the petitioner was to cheat right from the beginning. Hence, the court of Magistrate has rightly taken cognizance of the offence under Section 420 of the Indian Penal Code. He submitted that though the petitioner has refunded Rs.2,99,000/- to the complainant, he has not paid the balance amount of Rs.2,02,000/- taken as advance for the property and Rs.1,03,000/- taken as loan so far.

7. I have heard learned counsel for the parties and perused the record.

8. The deed of agreement to sell dated 20.06.2011 has been brought on record by the petitioner as Annexure- 2 to the present application. It would be evident from the narration given in the deed that the negotiation for the property was made for an amount of Rs.17,50,000/- out of which Rs.5,01,000/- only was paid to the petitioner by the complainant in advance. It is manifest from the terms of the agreement that the purchaser was required to pay the balance

amount of sale consideration within three months and complete the registration formalities before three months. In order to corroborate the submission that the land in question was raiyati and not *gairmazarua*, learned counsel for the petitioner has relied upon the report of the circle officer, which is annexed as Annexure-5 to the present application. Though the complainant/ opposite party no. 2 has filed a counter-affidavit in the present matter, he has not disputed the aforesaid report submitted by the circle officer. From perusal of the report of the circle officer, it would be evident that the property in question is *raiyati* land. Thus, the plea of the complainant that as he came to know subsequently that the property in question was *gairmajarua* land, he did not pay the balance amount and requested the petitioner to return the advance money taken by him appears to be misconceived. If the property in question was *raiyati* land, it was the complainant, who failed to perform his part of duty in terms of the agreement provided for payment of the balance amount within three months, a condition which was dishonoured by the prospective buyer (complainant).

9. So far as non-refund of the balance amount of Rs.2,02,000/- taken as advance is concerned, I am of the considered opinion, the same in itself would not make out a case of cheating. The complainant admits that the petitioner had refunded Rs.2,99,000/- out

of Rs.5,01,000/- taken as advance.

10. Thus, no dishonest intention can be seen or inferred inasmuch as the entire dispute pertains to a contract between the parties. I also find that the complaint in question lacks *bona fide*. It is not the case that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could have transferred title of the property to the complainant. Merely because, an agreement to sell was entered into the parties and subsequently the complainant failed to pay the balance amount in terms of the agreement, as a result of which the deed could not be registered and the petitioner failed to return part of the amount to the complainant taken as advance, no case for prosecution under Section 420 of the Indian Penal Code can be made out. There is nothing to suggest that the intention of the petitioner was to cheat the complainant right from the beginning.

11. So far as non-refund of Rs.1,03,000/- taken by the petitioner from the complainant by way of loan is concerned, the allegation seems to be highly improbable. When the complainant was not being paid Rs.2,02,000/-, the balance amount of advance despite demands being made in this regard, it is beyond imagination that the complainant would have paid such amount to the petitioner as loan. Even otherwise, non-refund of an amount taken as friendly loan

would not attract the ingredients of the offence punishable under Section 420 of the Indian Penal Code.

12. Apparently, a dispute, which is essentially of civil nature, has been given a cloak of criminal offence. It is well settled in law that criminal proceeding is not a short cut of other remedies available in law. It is the duty of the Magistrate dealing with such matters to see that the proceedings of criminal case are not misused for settling civil disputes and claims. The Magistrates are duty bound to discourage the practice of any effort by the complainant to settle disputes and claims, which do not involve any criminal cases by institution of criminal complaint.

13. Regard being had to the discussions made above, the impugned order dated 14.08.2013 passed by the learned Judicial Magistrate, 1st Class, Patna City in C. A. No. 252 of 2013 summoning the petitioner to face trial for the offence under Section 420 of the Indian Penal Code deserves to be set aside. It is set aside, accordingly.

14. The application stands allowed.

(Ashwani Kumar Singh, J.)

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