IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40023 of 2014

Arising Out of PS.Case No. -557 Year- 2012 Thana -PATNA COMPLAINT CASE District-PATNA

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1. Surya Narayan Singh @ Surya Narayan Son of Ishwar Singh Resident of Village - Lalganj, P.S. - Silaw, District - Nalanda, at present House No. V-499, Lohia Nagar, P.S. - Patrakar Nagar, District - Patna
2. Mukta Mani Singh Wife of Atma Nand Singh, Daughter of Surya Narayan Singh @ Surya Narayan Resident of Village - Baraiya, P.S. - Sikandra, District - Jamui
3. Sanjukta Singh Wife of Manish Sharma, Daughter of Surya Narayan Singh @ Surya Narayan Resident of House No. 206, Sector -48-C, Mohali (Chandigarh)

.... Petitioner/s

Versus

1. The State of Bihar
2. Manoj Kumar S/o Sri Ramesh Prasad Resident of Mohalla - Gandhi Nagar, Behind Punjab National Bank, P.S. - Agamkuan, Distt.- Patna

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Dhirendra Kumar Gupta, Advocate
For the Opposite Party/s : Mr. Prem Kumar Jha, APP

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT
Date: 01-11-2017

This Criminal Miscellaneous under Section 482 of Cr.P.C. has been filed for quashing the order dated 26.06.2014 passed by Sri Arun Kumar Singh, 1st Additional Sessions Judge, Patna in Criminal Revision No. 587 of 2012 arising out of Complaint Case No. 557(C) of 2012 affirming the order dated 07.07.2012 passed by Judicial Magistrate, 1st Class in Complaint Case No. 557(C) of 2012 taking cognizance against the petitioner under Sections 406, 420, 120B of I.P.C.

2. Briefly stated, the facts of the case is that the complainant opposite party No. 2 filed a Complaint Case in the Court

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of Chief Judicial Magistrate, Patna, inter alia, stating therein that in January, 2010 petitioner No. 1 had approached him for sale of his land measuring an area of 6 kathas situated at Mauza- Kumhrar, P.S. – Sultanganj, District- Patna and complainant became ready to purchase the said land for which the agreement for sale was executed and three months time was provided for execution and registration of sale deed. It has been further alleged that in spite of giving advance petitioner No. 1 has not executed sale deed and on his demand to return money petitioner No. 1 has not returned the money. Petitioner No. 1 had purchased the land in the name of his minor daughters through two different registered sale deed in the year 1988. In the Complaint petition, it has been stated that although the sale deed stands in the name of two daughters but same was purchased by the petitioner No. 1 from his own fund and the land is in his possession and his two daughters i.e. petitioner Nos. 2 and 3 are ready and willing to execute the sale deed in favour of complainant opposite party.

3. The petitioner No. 1 urgently requires money and with consent of his two daughters is ready and willing to execute the sale deed after receiving the consideration money which was agreed at Rs. 38 lakhs. The complainant opposite party No. 2 paid an advance amount of Rs. 10 lakhs and deed of agreement for sale was executed on 18.01.2010 with a condition that remaining amount would be paid within three months and thereafter sale deed will be executed. Bank

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draft of Rs. 6,80,000/- and cash amount of Rs. 10,20,000/- was paid by the complainant opposite party No. 2 on 11.04.2010 and period of execution of sale deed was extended till 18.05.2010. On 11.05.2010 Rs. 7,00,000/-was paid by the complainant through Bank Draft and thereafter period for execution of sale deed after receiving the full consideration amount was extended till 18.07.2010. The petitioner has been receiving the money from the complainant in writing at the cover leaf of first page of agreement for sale and put his signature and Rs. 34 lakhs out of total consideration amount of 38 lakhs was paid. Thereafter petitioner showed reluctance in accepting the remaining amount of Rs. 4 lakhs and started making excuses in execution of sale deed and complainant opposite party No. 2 came to know that petitioner has taken advance from other persons also for the same land and as such he cheated the complainant and opposite party No. 2 by misrepresentation and fraudulent inducement.

4. Lastly on 15.07.2010 the complainant forced the petitioners to execute the deed then he was called on 22.10.2010 and on that date complainant along with witnesses persuaded him either for execution of sale deed or for return of the money and petitioner No. 1 agreed that in case sale deed could not be executed, he is ready to refund Rs. 34,000/- taken as advance by December 2010 with interest.

5. On 26.02.2012 the complainant opposite party No. 2

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approached the petitioner No. 1 but instead of refunding the money he misbehaved and manhandled the complainant. The petitioner with dishonest intention had entered into an agreement for sale by a written deed by misrepresentation and fraudulent inducement that petitioner Nos. 2 and 3 daughters of petitioner No. 1 are ready and willing to execute the sale deed in favour of complainant opposite party No. 2 and after receiving the consideration amount he neither executed the sale deed nor refunded Rs. 34 lakhs taken as advance by petitioner No. 1.

6. On the basis of such averments made in complaint petition, Complaint Case No. 557(C) of 2012 was filed by the complainant opposite party No. 2. The complainant was examined on S.A. and in support of his case witnesses were examined on his behalf and on the basis of complaint petition, examination of complainant on S.A. and statement of witnesses, the trial court found a prima facie case to be made out against the petitioners and took cognizance of the offence under Sections 406 and 420 of I.P.C. and issued notices to the petitioners for their appearance and to face trial .

7. Against the order passed by Judicial Magistrate 1st Class, taking cognizance against the petitioners under Sections 406 and 420 of the Indian penal Code, the petitioners filed a Criminal Revision No. 587 of 2012. By order dated 26.06.2014, same was dismissed by 1st Additional Sessions Judge, Patna. From the order dated 26.06.2014

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which is impugned, it appears that none had appeared on behalf of revisionist to argue the matter and in their revision petition petitioners have taken the issues of jurisdiction of the Court at Patna, as no part of offence was committed within the jurisdiction of Patna, and as such Court of Patna had no jurisdiction to entertain the complaint case as all the alleged offences were committed at the residence of complainant which falls under the jurisdiction of Patna City and as such, the order taking cognizance by the Magistrate was not sustainable in the eye of law . The revisional Court has held that from the contents of complaint petition it appears that complainant and witnesses approached the petitioner on 26.02.2012 at Patna to return the money but he misbehaved and manhandled the complainant, and, as such, part of offence has been committed within the territorial jurisdiction of Patna as such the order passed by the trial court does not suffer from lack of territorial jurisdiction and it has further been held that from the materials available on record prima facie case under Sections 406, 420 and 120B of I.P.C. is made out against the petitioners and dismissed their revision petition.

8. A given set of facts may make out (a) purely civil dispute (b) purely a criminal offence and (c) a civil wrong as also a criminal offence. A contractual dispute apart from giving cause of action for seeking remedy in civil law can also involve a criminal offence. Mere fact that the complainant has availed remedy of filing

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civil suit for realization of money is not by itself a ground to quash the criminal proceeding. The test is whether the allegation in the complaint discloses criminal offence or not. After reading of the complaint petition if no criminal offence is made out, the criminal prosecution can be quashed. However, if the complaint petition discloses a criminal offence, than only on the ground of civil suit is pending between the parties, criminal case cannot be quashed. In the present case, complainant does make averments so as to infer fraudulent and dishonest inducement made by petitioner No. 1 to the complainant pursuant to which complainant parted with his money.

The Apex Court in its judgment reported in 2014 (14) SCC 29, has held as following:-

> **6. The legal position with regard to exercise of jurisdiction by the High Court for quashing the first information report is now well settled. It is not necessary for us to delve deep thereinto as the propositions of law have been stated by this Court in *R. Kalyani V. Janak C.Mehta* in the following terms: (SCC p.523, para 15)**
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> **e. "15. Propositions of law which emerge from the said decisions are:**
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> **(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a**

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criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any *mens rea or actus reus*.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

7. Yet again in Mahesh Chaudhary V. State of Rajashtan this Court stated the law thus: (SCC p. 443, para 11)

"11. The principle providing for exercise of

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> **the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence."**

9. Criminal case filed by opposite party No. 2 complainant cannot be quashed as averments of misrepresentation and fraudulent inducement is made out against the petitioner No. 1 at the time of executing agreement for sale, however no such allegation is against petitioner Nos. 2 and 3. From the contents of complaint petition it is apparent that when this agreement for sale was executed between the parties and 10 lakhs was received by the petitioner the remaining amount was to be paid within three months and after payment of full consideration amount the sale deed was to be executed but the money could not be paid within three months and thereafter it was paid on different dates, and time for execution of sale deed was being extended and finally Rs. 34 lakhs was paid by the complainant but thereafter sale deed was not executed by the petitioners and even on promise made to refund 34 lakhs with interest same was not returned and for which complainant had to file a money suit. The non-

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execution of sale deed by the petitioners itself will not constitute a criminal offence but even after promise made to return Rs. 34 lakhs taken as advance with interest and same being not refunded, it certainly constitute a criminal offence.

10. Considering the facts and circumstances of the present case, I do not find any error in the order passed by revisional Court or trial court taking cognizance against the petitioner No. 1 under Sections 406 and 420 of I.P.C., however no such offence is made out against petitioner Nos. 2 and 3, as such, present petition is allowed against petitioner Nos. 2 and 3, however prosecution against petitioner No. 1 will continue.

11. The petition is partly allowed.

(S. Kumar, J)

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