

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51375 of 2013

Arising Out of PS.Case No. -2965 Year- 2011 Thana -PATNA COMPLAINT CASE District-
PATNA

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Manju Kalawati Devi, Wife of Shri Sadanand Ram, Resident of 7 H.F. 3/9 H.I.G.
Housing Colony, Kankarbagh, P.S.- Kankarbagh, District- Patna.

.... Petitioner

Versus

1. The State of Bihar
2. Niraj Gautam, Son of Shree Ashok Kumar, R/O Mohalla- Rajendra Nagar Road
No.8, Plot No. 123 'B' Matri Niwas, P.O. And P.S.- Kadamkuan, District- Patna

.... Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Srivastava, Adv.
For the Opposite Party/s	:	Mr. Mayanand Jha, APP
For the O.P. No.2	:	Mr. Md. N.Hoda, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 02-08-2017

Heard learned counsel for the petitioners, learned counsel
for O.P. No.2 and also learned A.P.P. appearing on behalf of State.

2. This application has been filed under Section 482 of
the Code of Criminal Procedure to quash the order dated 18.08.2012
passed in Complaint case No. 2965 (C) of 2011, whereunder the Judicial
Magistrate, 1st Class, Patna summoned the accused-petitioner, on
enquiry, under Section 204 Cr.P.C. finding prima facie case under
Section 406 of the Indian Penal Code.

3. The fact leading to this application is that
complainant-O.P. No.2 Niraj Gautam filed Complainant Case No. 2965
(C) of 2011 to the effect that the petitioner and her husband Sadanand
Ram approached him to sell the land and house measuring Area 6.9
Katha of Plot No. 375, Khata No. 82, Holding No. 578/3c, Circle No. 50A.
in village Sadiqpur Yogi, P.S. Kankarbagh town, District-Patna and
negotiation price of the land and house was fixed Rs. 3,42,55,950/-. The



complainant-O.P. No.2 paid Rs. 40 lakhs as advance and thereafter agreement to sale was executed by the petitioner on 08.04.2011. Subsequently, the complainant-O.P. No.2 also paid Rs. 45 Lakhs to the petitioner on different dates, which was detailed in the back side of 1st page of the agreement for sale dated 08.04.2011. On payment of Rs. 95 Lakhs, the complainant-O.P. No.2 came to know that there is defect of title, which had not been disclosed by the petitioner and other accused and they managed to get Rs. 95 Lakhs concealing the defects. The complainant-O.P. No.2 asked to the petitioner about defect of title and he also sent legal notice to the petitioner, but she did not take any heed on it. The informant requested to return the money, but the petitioner did not ready to return Rs. 95 lakhs, which was given by the complainant-O.P. No.2 as an advance to execute the sale deed.

4. Learned counsel appearing on behalf of the petitioner submits that, in fact, due to illness of her father-in-law, she talked to the complainant-O.P. No.2 to sale her land as detailed in the complaint petition and also executed the agreement to sale on receiving Rs. 40 Lakhs and subsequently, she received Rs. 45 Lakhs, but in spite of notice to execute the sale deed, as detailed in the agreement to sale, O.P. No. 2 did not give any heed. The Cheque of Rs. 30 lakhs as issued by the petitioner was also dishonoured on presentation for encashment. Later on, the complainant-O.P. No.2 filed the Title Suit No. 5277 of 2014 in the Court of Sub-Judge-I, Patna against the petitioner, Sadanand Ram, husband of the petitioner and one Surendra Singh, Mediator of the negotiation, for recovery of Rs. 95 lakhs, but only to give undue pressure, the complainant-O.P. No.2 filed the present complaint Case No. 2965 (C) of 2011.



5. On the other hand, learned counsel appearing on behalf of complainant-O.P. No.2 submits that on perusal of the Complaint petition, it would appear that petitioner cheated the complainant-O.P. No.2 by taking Rs. 95 lakhs in advance and executing the agreement to sale, but later on it was detected that the petitioner was not the owner of the land.

6. On perusal of the Compliant petition, it appears that dispute between the parties appears to be of disobeying of the terms and conditions of the agreement to sale and the complainant-O.P. No.2 has also filed Title Suit No. 5277 of 2014 for recovery of amount of Rs. 95 lakhs, which is said to be paid by him to the petitioner, as advance, in consequence of execution of the sale deed. As such impugned order summoning the accused petitioner, on enquiry, under Section 204 Cr.P.C. finding prima facie case under Section 406 of the Indian Penal Code is appears to be mala fide and abuse of process of the Court.

7. In the result, the impugned order dated 18.08.2012 passed in Complaint case No. 2965 (C) of 2011, whereunder the Judicial Magistrate, 1st Class, Patna summoned the accused-petitioner, on enquiry, under Section 204 of Cr.P.C. finding prima facie case under Section 406 of the Indian Penal Code, is hereby quashed. Accordingly, this application is allowed.

(Rajendra Kumar Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.08.2017
Transmission Date	04.08.2017

