

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38569 of 2013

Arising Out of PS.Case No. -2836 Year- 2010 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

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1. Ashok Kumar Tiwari @ Ashok Tiwari, Son Of Late Rajbali Tiwary Residnet Of Vill- Matihani, P.S- Bishambharpur, District:- Gopalganj.
2. Vivek Kumar Tiwari @ Vivek Tiwari Son Of Late Rajbali Tiwary Residnet Of Vill- Matihani, P.S- Bishambharpur, District:- Gopalganj.
3. Dipak Kumar Tiwari @ Dipak Tiwary Son Of Rajbali Tiwary Residnet Of Vill- Matihani, P.S- Bishambharpur, District:- Gopalganj.

.... Petitioners

Versus

1. The State of Bihar
2. Dharmendra Tiwary, son of Late Satendra Tiwary, resident of village- Matihani, P.S. Bishambharpur, District- Gopalganj.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Alok Kumar Jha, Advocate

For the Opposite Parties : None

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 25-07-2017

This application has been filed by petitioners under Section 482 of the Code of Criminal Procedure for setting aside order dated 24.6.2013 passed by 2nd Additional Sessions judge, Gopalganj in Cr. Revision No.653 of 2012 whereby he declined to interfere with the cognizance order dated 4.10.2012 passed by Judicial Magistrate Ist Class, Gopalganj in Complaint Case No.2836 of 2010 wherein cognizance of the offence under Section 418 of the Indian Penal Code has been taken by the Magistrate.

2. Allegation in brief as narrated in the complaint



petition is that on 4.1.2010 the land of the share of the complainant was sold by Sujit Tiwary, Sunil Tiwary, Sabitri Kuwar to other co-accused; so they have created a forged sale deed.

3. The Magistrate after enquiry has taken cognizance of the offence under Section 418 of the I.P.C.

4. Learned counsel for the petitioners submits that they are bonafide purchasers and had purchased the land admittedly from the co-sharer of the complainant after paying consideration money and up till now there is no partition between co-sharers of the complainant and his vendors have sold their share of 1 katha 10 dhurs of land.

5. No one appeared on behalf of the opposite party no.2 despite already appearance earlier made in this case.

6. Learned Additional Public Prosecutor submits that allegation is that the petitioners have purchased the land belonging to share of the complainant.

7. Having considered rival submissions and on perusal of the record, the allegation made in the complaint as well as in the statement of the complainant on solemn affirmation go to indicate that the petitioners have purchased land 1 katha 10 dhurs of land of katha no.113, khesra no.857 having total area 11 katha The vendors of the petitioners are admittedly co-sharers of the complainant so in the



backdrop of these facts no ingredients of cheating is made out against the petitioners. Section 415 of I.P.C. defines cheating, which requires deception of any person, secondly fraudulently and dishonestly inducing that person to deliver any property or to consent that any person shall retain any property or intentionally inducing that person to do or omit to do anything which he would not do or omit if he was not so deceived and such act or omission causes or is likely to cause damage or harm to that person in body, mind reputation or property. In the present case such ingredients are missing. Section 418 of the I.P.C. reads as such :-

“418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.- Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both”.

8. In view of this section the ingredients are that a person whoever cheats with knowledge that he is likely to cause wrongfully loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, such interest. The ingredients of these offences are not attracted against the petitioners, who are purchasers so for the



said reason no prima facie case under Section 418 of I.P.C. is made out against the petitioners so cognizance order dated 4.10.2012 passed in Complaint Case No.2836 of 2010 with respect to the petitioners only is set aside as well as the order dated 24.6.2013 passed by 2nd Additional Sessions Judge, Gopalganj in Cr. Revision No.653 of 2012 is quashed.

9. The petition stands allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06-09-2017
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