

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28174 of 2012

Arising Out of PS.Case No. -4002 Year- 2010 Thana -null District- PURNIA

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Nikhila Nand Thakur, son of Sri Indra Nand Thakur, resident of A/1, Magistrate Colony, P.O. - Ashiyana Nagar, P.S. - Rajeev Nagar, Town & Distt. Patna-800025 (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar
2. Anwar Alam, son of Mehafooz Alam, r/o Village Sickat, P.S. Barari, Distt-Katihar (Bihar), at present residing at Lakshmipur Lohjar, P.S.-Falka, Distt-Katihar (Bihar)

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raju Giri, Advocate.
For the opposite party No.2 : Mr. Sanjeev Kumar Singh, Advocate.
For the Opposite Party/s : Mr. A.M.P. Mehta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 22-08-2017

1. This application under Section 482 Cr. P.C. has been filed for quashing the order dated 28.02.2012 passed by the learned Judicial Magistrate, Purnea, in connection with Complaint Case No. 4002 of 2010 by which the learned Magistrate has after holding enquiry found *prima facie* case against the petitioner for the offence under Sections 323, 417 and 506 of the Indian Penal Code.

2. As per complaint petition, petitioner wanted to sell his Raiyati land to the complainant, for which the complainant had paid Rs.3,72,000/- and only Rs.50,000/- was left to be paid. A *Jarbeyana* was executed in the year 1995 by the petitioner. The complainant has stated that he is in possession of the land as *Bataidar*



since 1985 itself. The petitioner sent several messages in the year 2010 for execution of sale deed and for payment of balance amount of Rs.50,000/-. The complainant managed to collect Rs.50,000/- and on the call of the petitioner on 5.11.2010, he went with original *Jarbeyana*. It has been alleged that petitioner took Rs.50,000/- and original *Jarbeyana*. The petitioner after taking the original *Jarbeyana*, neither returned the papers nor gave receipt of the money. The complainant made demand of original paper and receipt then he was threatened to be implicated in false case. It has further been alleged that petitioner also assaulted the informant.

3. Heard learned counsel for the petitioner, learned counsel for the opposite party No. 2 and learned counsel for the State.

4. During enquiry, besides solemn affirmation of the complainant, statement of four other witnesses was recorded. The court below on the basis of aforesaid statement of the witnesses, found *prima facie* case against the petitioner by the impugned order for the offence under Sections 323, 417 and 506 of the Indian Penal Code.

5. The Solemn Affirmation of the complainant and other four witnesses has been filed by way of supplementary affidavit.

6. From perusal of Solemn Affirmation of the complainant and the statement of four witnesses, it appears that there



is no any consistency with regard to the preparation of the agreement paper. Modassir Kaifi (EW1) has stated that agreement was prepared by the complainant Anwar Alam at the house of the petitioner. Md. Sajjad (EW2) has stated that agreement was prepared by the petitioner at the Registry Office and he does not know about the details of the land. Saji Ahmad (EW3) has stated in his statement that he was present at the time of preparation of the agreement, but the agreement was not registered. It was prepared on stamp paper.

7. The complainant has admitted in his Solemn Affirmation that he is *Bataidar* of the aforesaid land. The complainant and other witnesses have stated in their statement in the court below that original paper of the agreement was taken by the petitioner when the complainant went to pay Rs.50,000/- to the petitioner with original agreement.

8. On the other hand, the petitioner has submitted that there was oral agreement for sale of the land and he has sent legal notice on 27.3.2001 to the complainant (opposite party No. 2) vide Annexure-2 to pay the balance amount and get the sale deed executed, but the complainant did not turn up.

9. From the Solemn Affirmation of complainant and statement of three witnesses, this Court finds that it is a matter of civil dispute. The complainant has civil remedy for his grievances.



10. Therefore, the continuance of present criminal proceeding against the petitioner will be abuse of process of Court.

11. Accordingly, the impugned order dated 28.02.2012 passed by the learned Judicial Magistrate, Purnea, in connection with Complaint Case No. 4002 of 2010 along with entire Criminal Proceeding against the petitioner is hereby quashed.

12. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A
Uploading Date	09/09/2017
Transmission Date	09/09/2017

