

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22142 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUZAFFARPUR

- =====
1. Upendra Sharma, s/o late Sidheshwar Singh,
 2. Vijay Sharma @ Vijay Kumar Sharma, s/o Sri Raj Kishore Sharma, resident of village- Raghunathpur, P.O. + P.S.- Hulasganj, District- Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar
2. Bajrang Prasad Singh, s/o late Indradeo Prasad Singh, R/O Village- Raghunathpur, P.O. + P.S.- Hulasganj, District- Jehanabad

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar II, Advocate
Mr. Ritesh Kumar, Advocate
Mr. Sanjeet Kumar Singh, Advocate
Mr. Ashutosh Singh, Advocate
For the Opposite Party/s : Dr. Rabindra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-05-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 31.03.2011 passed by the Judicial Magistrate, 1st class, Muzaffarpur, in Complaint Case No.C-1511 of 2002/Tr. No.3213 of 2011, whereby the petition for discharge filed on behalf of the petitioners was rejected.

2. Heard learned counsel for the Petitioners and the State.

3. Learned counsel for the Petitioners has alleged that in the instant case even if there is agreement entered into



between the parties for sale of the land and assuming the cheques were given by the complainant to the petitioners then also no criminal liability will be there because there was no intention on the part of the petitioners to cheat the complainant. It has further been submitted that for the grievance, as raised in the Complaint Petition, civil remedy is available to the complainant. The petitioners have also denied of having encashed the amount as mentioned in the two cheques. They have also annexed the two cheques as Annexure-2 series, which is apparently a bearer cheque allegedly issued by the Opposite Party No.2 in favour of the petitioners.

4. Learned counsel for the Petitioner has relied upon a decision of the Supreme Court in the case of *Murari Lal Gupta Vs. Gopi Singh* reported in (2005) 13 Supreme Court Cases 699 in support of his argument.

5. Notice was issued to the Opposite Party No.2, which has validly been served, but none appeared on behalf of the Opposite Party No.2.

6. Learned APP has submitted that no illegality has been committed by the learned court below.

7. From perusal of the Complaint Petition, it appears that the complainant has alleged that he entered into agreement with the petitioners for purchase of 55 decimals of land, as mentioned in



the Complaint Petition, for total consideration amount of rupees one lac. The accused persons asked for advance payment of consideration money for execution of the sale deed. After entering into agreement between the parties for sale of land, petitioner No.2 took advance of rupees fourteen thousand through cheque no.922245 dated 03.05.2002 payable at State Bank of India, Islampur Branch, Nalanda. Thereafter, on 14.06.2002, both accused came to the house of the complainant and demanded balance amount of consideration money, whereupon, the complainant paid rupees eighty six thousand to the petitioner No.1, Upendra Sharma, vide cheque no.922259 dated 14.06.2002, payable by the State Bank of India, Islampur Branch, Nalanda. It is further alleged that the petitioners after receiving entire consideration money neither executed the sale deed nor refunded the money. In this manner, the accused have committed fraud with the complainant and misappropriated the amount.

8. The petitioners filed petition for discharge in the Court below under Section 245 Cr. P.C. The Court below by the impugned order after relying on the evidence of the witnesses before charge rejected the aforesaid petition on the ground that there are sufficient materials to frame charge against the petitioners in this case. The Court below also appeared to have relied on the cheques by stating that these are the documentary evidence.



9. From the averment in the Complaint Petition itself, it appears that the complainant entered into agreement for sale with the petitioners for purchase of land for consideration of rupees one lac. It is the assertion of the complainant that he paid the entire consideration amount in advance, as agreed, through two cheques, which as per the complainant was encashed and thereafter the petitioners refused to execute the sale deed.

10. The learned Magistrate has found *prima facie* case under Section(s) 418 and 420 Indian Penal Code. The learned Magistrate by the impugned order has stated that there are sufficient materials to frame charge for the aforesaid offence.

11. This Court on the very averment made in the Complaint Petition does not find any ingredient of Section 418 and 420 Indian Penal Code. The Hon'ble Supreme Court in the case of ***Murari Lal Gupta Vs. Gopi Singh*** reported in (2005) 13 ***Supreme Court Cases 699*** has clearly held that in absence of any averment in the complaint so as to infer any fraudulent or dishonest inducement having been made by the Petitioner pursuant to which the Respondent parted with his money, it cannot be said that the Petitioner has cheated the Respondent.

12. Therefore, this Court finds that the impugned order suffers from illegality and continuance of criminal proceeding



against the petitioners will be abuse of process of Court and harassment to the petitioners.

13. Accordingly, the impugned order dated 31.03.2011 passed by the Judicial Magistrate, 1st class, Muzaffarpur, in Complaint Case No.C-1511 of 2002/ Tr. No.3213 of 2011, along with entire criminal proceeding with respect to the petitioners is hereby quashed.

14. This application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22-05-17
Transmission Date	22-05-17

