

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10242 of 2014

Arising Out of PS.Case No. -1337 Year- 2009 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

=====

Muni Lal Singh Son Of Late Ram Narayan Singh Resident Of Village-
Baharar, Ps- Sasaram (Muffassil), District- Rohtas

.... Petitioner

Versus

1. The State Of Bihar
2. Dasarath Kumar Singh S/O Late Ram Narayan Singh Resident Of
Village- Baharar, Ps- Sasaram (Muffassil), District- Rohtas

.... Opposite Parties

=====

Appearance :

For the Petitioner : Mr. Ramchandra Singh, Advocate.

For the Opposite Parties : Mr. Anuj Kr. Srivastav (APP)

=====

**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN
SHARMA**

ORAL ORDER

11 10-07-2017 The instant application has been filed for quashing the

order dated 16.01.2014 passed by Sri Balendra Shukla, the learned

Judicial Magistrate, 1st Class, Rohtas at Sasaram in Complaint

Case No. 1337 of 2009, whereby and whereunder, the petition

filed by the petitioner dated 02.11.2013 under section 245 of the

Cr.P.C. has been rejected.

Heard the learned counsel for the petitioner and the

learned A.P.P. for the State.

The Complaint Case No. 1337 of 2009 was filed by

the complainant with the allegation that the petitioner took

Rs.1,00,000/- by way of loan to refund the same but the petitioner



did not refund the said loan amount and gave a cheque of Rs.1,00,000/- which was bounced. Thereafter, again the petitioner approached the complainant and demanded further Rs. 1,00,000/- with the assurance to return the said amount till the month of February, 2009 and executed a memorandum of agreement agreeing therein that if he will not return the said amount the petitioner will execute the sale deed with respect to 31.¼ decimals of land but thereafter neither the sale deed was executed nor the amount of Rs. 2,00,000/- was returned.

The matter was enquired into after making enquiry an order dated 13.01.2010 was passed directing to issue summon against the petitioner for committing offences under sections 406 and 420 of the I.P.C. Against that order Cr. Misc. No. 15140 of 2011 was filed which was disposed of by order dated 09.08.2012. Finding no error in the impugned order liberty was given to the petitioner to raise all these points before the court below at the appropriate stage of trial. Thereafter, three witnesses before charge have been examined on behalf of the complainant and then a petition under section 245 of the Cr.P.C. was filed by the petitioner on 02.11.2013 which was heard and rejected by order dated 16.01.2014. Against which this Criminal Miscellaneous has been filed.



Submission on behalf of the petitioner is that it is purely a civil dispute; no criminal offence is made out. There was no intention to cheat the complainant. The petitioner has executed memorandum of agreement and as such the impugned order appears fit to be quashed.

The learned A.P.P., on the other hand, submits that before charge the witnesses examined have been cross-examined but nothing has come by which the petitioner can claim to discharge from that case rather it has come that money was paid in presence of the witnesses.

Considering the submissions urged at the Bar, going through the impugned order and the record, it is manifest that the three witnesses examined on behalf of the complainant have also been cross-examined before charge but nothing has come to disbelieve their testimony. The learned counsel for the petitioner has placed reliance in the case reported in 2016 (3) PLJR, page-939 (Smt. Annu Singh & Ors. Vs. The State of Bihar & Ors). The ruling cited on behalf of the petitioner is on different footing. In that case there was allegation of not executing the sale deed despite taking consideration money from the complainant. Here the petitioner has not given consideration money rather he has taken loan and as such in the facts and circumstances both civil



and criminal liabilities arise. The learned court below after considering the materials available on the record and finding that there are sufficient material on the record to frame charge has passed the impugned order. There being no illegality, incorrectness or impropriety in the impugned order, the same does not require any interference by this Court.

In the result, the order dated 16.01.2014 is hereby confirmed and finding no merit in this Criminal Miscellaneous the same is hereby dismissed.

(Jitendra Mohan Sharma, J)

Abhay/-

U		T	
---	--	---	--

