

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23086 of 2011

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1. Yogendra Sah, s/o late Saukhi Sah
2. Thakan Sah, s/o Mishri Lal Sah
3. Mahendra Sah, s/o late Mohan Sah
All resident of village- Nariyar, Tola, Bengha, Ward No. 11/3, Police Station-
Saharsa, District- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar
2. Brahmdev Sah, s/o Kalar Sah, resident of village- Nariyar, Tola, Bengha, Ward
No. 11/3, Police Station- Saharsa, District- Saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Viveka Nand Singh, Advocate.
Mr. Aarsh Kumar
For the Opposite Party No.2 : None.
For the State : Dr. Mayanand Jha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 18-05-2017

1. This application has been filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 3.4.2010 passed by the Judicial Magistrate 1st Class, Saharsa, in connection with Complaint Case No. 1065C of 2006 by which he has found *prima facie* case against these petitioners for the offences punishable under Sections 420, 468, 471 and 120B of the Indian Penal Code and also the order dated 24.5.2011 passed by the learned District and Sessions Judge, Saharsa, in Cr. Revision No. 100 of 2010 by which he has dismissed the Revision application filed by the petitioners against order dated 3.4.2010 passed by the learned Judicial



Magistrate on the ground that the court below has committed no error.

2. From the order dated 20.1.2014 it appears that appearance was filed on behalf of the opposite party No. 2 but at the time of hearing, none has appeared on behalf of the opposite party No. 2.

3. Heard learned counsel for the petitioners and learned counsel for the State.

4. Counsel for the petitioners has submitted that this complaint case has been filed by the complainant as a counter blast to save themselves from the suit filed by the petitioner No. 1 against the Complainant being Title Suit No. 218A of 2004 for specific performance of contract for the same piece of land which is subject matter in this Complaint Case, stating therein that the Complainant (opposite party No. 2), his brother and father executed an agreement for sale of the land for consideration amount of Rs.1,40,000/- in favour of petitioner No. 1. They took advance of Rs. 1,00,000/- but when the rate of land increased, neither they returned the money nor executed the sale deed.

5. The complainant has filed the instant case in the year 2005 vide Complaint Case No. 582C of 2005, before the learned Chief Judicial Magistrate, Saharsa which was sent to Police Station under Section 156 (3) Cr. P.C. for investigation and enquiry and on



the basis of which Police registered Saharsa Sadar P.S. Case No. 314 of 2005 dated 4.10.2005. The police after completion of investigation, submitted Final Form in that case as the case not true against these petitioners and co-accused Anandi Sah and also recommended to proceed against the complainant under Sections 182 and 211 of the Indian penal Code. Thereafter, on the basis of protest petition, the enquiry was held and learned Magistrate treated the protest petition as complaint petition and registered Complaint Case No. 1065 C of 2006 and after holding enquiry under Section 202 Cr. P.C. dismissed the Complaint on 18.2.2009 holding that no *prima facie* case is made out against the petitioners and co-accused Anandi Sah.

6. The Opposite party No. 2 filed Revision application against the order dated 18.2.2009 passed by the learned Judicial Magistrate 1st Class, Saharsa, before the learned Sessions judge, vide Cr. Revision No. 36 of 2009. The learned Sessions Judge, Saharsa, vide order dated 10.11.2009 set aside the order dated 18.2.2009 passed by the learned Judicial Magistrate and directed the Chief Judicial Magistrate, Saharsa, to hold further enquiry in the matter.

7. The learned Magistrate after holding further enquiry, has found *prima facie* case for the offences under Sections 420, 468, 471 and 120B of the Indian Penal Code by order dated



3.4.2010 against the petitioners and co-accused Anandi Sah. The aforesaid order was challenged by the petitioner before the learned Sessions Judge, Saharsa in Cr. Revision No. 100 of 2010 on the ground that court below without taking any further evidence, passed the impugned order and the learned Sessions Judge vide order dated 24.5.2011 dismissed the aforesaid Cr. Revision on the ground that learned magistrate has committed no error.

8. The main argument advanced on behalf of the petitioners in this case is that in the complaint itself, the date of occurrence has been shown in the year 1993. It has been submitted that the stamp was purchased in 1993 and the agreement was prepared in the year 2001 but the complaint was filed in the year 2005 i.e. after delay of about 12 years. It is further argued that the entire Proceedings filed by the Complainant is malicious as a counter blast to the suit for specific performance of contract filed by these petitioners, against the complainant, vide Title Suit No. 218A of 2004, which is still pending before the Sub Judge, Saharsa. It has further been submitted that the dispute is purely of civil nature and just to harass the petitioners, the opposite party No. 2 has filed the instant complaint.

9. As mentioned above, none appeared on behalf of the opposite party No. 2. Learned counsel for the State has appeared.



10. From the narration made above in detail, this Court finds that prior to filing of this Complaint, by the opposite party No. 2, the petitioners have filed Title Suit No. 218A of 2004, for Specific Performance of contract, with regard to the same property, which is the subject matter of the instant complaint case, with specific averment, in the plaint, that the complainant and his family members have entered into an agreement with the petitioners to execute a sale deed with respect to the aforesaid land for consideration amount of Rs.1,40,000/- and they also took advance of Rs.1,00,000/- , but later on, refused to execute the sale deed and return the money since the price of land, had increased and, thereafter, to harass the petitioners, the complainant had filed instant complaint by making allegation in the Complaint that some Stamp paper had been purchased in the year 1993 and on the basis of which, agreement was prepared in the year 2001, but no any such document was filed by the Complainant before the court below.

11. After remanding the case by the learned Sessions Judge, Saharsa, by order dated 10.11.2009 passed in Criminal Revision No. 136 of 2009, the court below, in mechanical manner, passed the order dated 3.4.2010 stating that prima facie case is made out against these petitioners and co-accused Anandi Sah. Thereafter, the Revisional Court also without applying his mind held that there is



no error in the order passed by the learned Magistrate dated 3.4.2010.

12. The Supreme Court has elaborately stated in a judgment reported in *1992 Supl (1), Page, 335, (State of Haryana Vrs. Bhajan Lal & Ors.)* in Clause-7 of paragraph-102 that “where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”, is liable to be quashed.

13. Therefore, the continuance of Criminal Proceeding against the petitioners will be abuse of the process of court.

14. Accordingly, the order dated 3.4.2010 passed by the Judicial Magistrate 1st Class, Saharsa, in connection with Complaint Case No. 1065C of 2006 and the order dated 24.5.2011 passed by the learned District and Sessions Judge, Saharsa, in Cr. Revision No. 100 of 2010, as well as the entire Criminal Proceeding against these petitioners are hereby quashed.

15. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	26.05.2017
Transmission Date	26.05.2017

