

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30002 of 2014

Arising Out of PS.Case No. -592 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Md. Faiyaz Ahmad @ Pappu son of Md. Nejamuddin Morham Resident of Mohalla- Daud Bigha, P.S.- Agam Kuan, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ravindra Prasad Son of Late Pshupati Mahto resident of village- Kumhrar Muslim Tola, P.S.- Agam Kuan, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Siddharth Harsh

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 04-07-2017

The petitioner seeks quashing of order dated 03.08.2013 passed by Sri Jitesh Kumar, Learned Judicial Magistrate, 1st Class, Patna City in complaint case no. 592 of 2013 whereunder and whereby cognizance of offence under Section 323, 384, 379, 504 of the I.P.C. was taken against the petitioner.

2. The facts in brief is that O.P. NO. 2 filed a complaint case on the file of ACJM, Patna City alleging inter alia that this petitioner and another co-accused playing fraud upon the complainant got a deed of power of attorney executed in his (petitioner) favour. The complainant subsequently cancelled the said



power of attorney on 20.05.2013. The petitioner on getting knowledge about cancellation of power of attorney fraudulently executed a sale deed in favour of accused no. 2 and on the date of occurrence he started making construction. The complainant raised protest whereupon the accused persons abused and assaulted the complainant and also snatched money and the documents which were kept in a bag.

3. The learned counsel for the petitioner submits that the complainant (O.P No. 2) bona fide executed the deed of power of attorney in his favour. The complainant received an amount of Rs. Three lacs on 10.02.2009 and executed a power of attorney in favour of this petitioner on the stamp paper purchased on 07.02.2009. The complainant had no right to cancel the deed of power of attorney as he had already received the entire consideration money of the land. It is the complainant, who cheated the petitioner for which the petitioner has filed a complaint case no. 2153 of 2013 against the complainant. In the said complaint case cognizance for the offence under Sections 420, 406, 323 and 379 of the I.P.C. has already been taken. The order taking cognizance against this petitioner in complaint case no. 592 of 2013 is not sustainable and is fit to be quashed.



4. The learned APP on the other hand opposed the submissions.

5. On perusal of documents on record, I find that there is specific allegation of committing theft, assault and extortion of money under threat by the petitioner and other co-accused. The complainant and witnesses in course of enquiry have supported the allegation and the court below took cognizance. The defence of the petitioner as set out in counter case alleging fraud and cheating against the complainant cannot be taken into consideration at the time of passing order on the point of cognizance. The petitioner will have opportunity to raise his defence at the time of trial.

6. In view of discussions made above, I do not find any merit in this case. Accordingly, this Criminal Miscellaneous Application is dismissed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	NA
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