

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13223 of 2014

Arising Out of PS.Case No. -931 Year- 2000 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

- =====
1. Sanjay Kumar Mishra Son Of Jagdish Mishra
 2. Smt. Usha Mishra Wife Of Sri Sanjay Kumar Mishra Both Resident Of Village – Baijnath Pur, Post Office - Har Nath Pur, Police Station - Shahkund, District - Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Satyendra Kumar Mishra Son Of Late Murari Prasad Mishra Resident Of Village - Klabganj Ishachak, P.O. + P.S. – Mojahid Pur, District - Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Birendra Sharma
Mr. Girish Chandra Sharma
For the Opposite Party/s : Mr. Humayu Ahamd Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 21-07-2017

This is an application under Section 482 of the Code of Criminal Procedure for quashing the order dated 12.02.2014 passed by Judicial Magistrate, 1st Class, Bhagalpur in Complaint Case No. 931 of 2000. The court below has refused to discharge the petitioners as per the impugned order.

2. Heard both sides and perused the records.
3. The Opposite Party No. 2 filed a complaint case on the file of C.J.M. alleging inter alia that he had sold a land (in question) to the petitioner No. 2, namely, Usha Mishra for a consideration money of Rs. 80,000/-. The complainant had mortgaged the land to



Bihar State Khadi Gramodyog and so, it was agreed that the loan amount will be deposited by the petitioners and after calculation the rest amount will be paid to the complainant. The said deed was registered on 01.02.1996 and after passing over a period of four or five years, the complainant came to know that the loan amount has come to the extent of Rs. 75,230/-. On persuasion of the complainant, the petitioners gave a demand draft of Rs. 75,000/- in the name of the complainant on 15.06.2000 and they took Chirkut of the sale deed saying that the rest amount of 5,000/- will be paid later on to the complainant. The complainant has further stated that the said draft was to be deposited on 16.06.2000 in the office of Khadi Gramodyog but as he could not reach at Patna, the same could not be deposited. The cheque was taken back by the petitioners on 16.06.2000, saying that they would deposit the same with Khadi Gramodyog. The petitioners did not deposit rather encashed the said amount. The complainant further alleged that these petitioners along with other accused reached at his house and hurled threat of dire consequence. The petitioners have thus cheated the complainant and committed breach of trust.

4. It has been submitted that the complainant has not come with clean hand. He has not mentioned even the details of land and the date of execution of the sale deed. The complainant has not



disclosed in the deed about the mortgage of the said land, which is evident from the sale deed. The petitioners have already paid the entire consideration money of Rs. 30,000/- along with Rs. 10,000/- towards the cost of the bricks, which was lying over the said land. The complainant has suppressed the fact that the land was mortgaged with Bihar State Khadi Gramodyog and so, it was the complainant, who cheated the petitioners. The order taking cognizance has been passed without their being any material on record. The Magistrate has passed the impugned order in mechanical manner and so the same is fit to be quashed.

5. The learned APP, on the other hand, opposed the submissions.

6. On perusal of complaint petition and impugned order, I find that the complainant in his S.A. and other witnesses at the time of inquiry have supported the allegation of cheating and committing breach of trust. The bank draft, which was given to the complainant for depositing the same, was subsequently taken back by the petitioners and malafide got it encashed. The petitioners by filing Annexure-4 want to establish that the complainant had actually sold the land for a consideration of Rs. 30,000/- for which he had executed a receipt, but the said receipt shows that the contents mentioned in Annexure-4 were written subsequent to the signature



of the complainant. The genuineness of the said receipt and defence of the petitioners shall be considered at the time of trial. The learned Magistrate, finding sufficient materials for prosecution of the petitioners, has rightly dismissed the discharge the petitioners. I do not find any illegality requiring any interference in the said order under inherent power under Section 482 of Cr.P.C.

7. This application is devoid of merit and is, accordingly, dismissed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	NA
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