

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49873 of 2014

Arising Out of PS.Case No. -1836 Year- 2013 Thana -WEST CHAMPARAN COMPLAINT
District- WESTCHAMPARAN(BETTIAH)

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1. Pradeep Kumar, S/o Shambhu Prasad
2. Pappu Prasad, S/o Mohan Prasad
Both are R/o Lauria Bazar, P.S. Lauriya, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Deepak Kumar Srivastava, S/o Late Gauri Shankar Srivastava, R/o Lauriya, P.S.
Lauriya, District - West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Adv.
For the Opposite Party/s : Mr. B.M.P. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 16-10-2017

Heard learned counsel for the petitioners. No one appears for the complainant-opposite party no.2 though he has entered appearance through his advocate in this Court and the name of the learned advocate is appearing on the record. Learned APP for the State is also present.

Learned counsel for the petitioners has assailed the order dated 03.06.2014 passed by learned Judicial Magistrate-1st Class, Bettiah, West Champaran in Tr.No.2952 of 2014, arising out of Complaint Case No.1836C/2013, by which the learned Magistrate has taken cognizance of the offence under Section 420/34 of the Indian Penal Code and decided to issue summons against the petitioners.



Learned counsel for the petitioners submits that a bare perusal of the complaint petition, as contained in Annexure-1, would show that no case under Section 420 of the Indian Penal Code is made out against these two petitioners who are purchasers of the land in question from one Sudhir Kumar Srivastava (accused no.1) for consideration.

In fact referring to the complaint petition learned counsel has shown that the whole case moves around a kind of internal agreement said to have been executed by three brothers namely Deepak Kumar Srivastava, Rajnish Kumar Srivastava and Sudhir Kumar Srivastava that they would jointly hold the land bearing plot no.1292 and 1293 falling in khata no.306 measuring area 5 decimals and all of them are said to have executed affidavit in view of a panchayati held wherein they had promised that the land in question shall not be sold to anyone by them and in case of any difficulty the same shall be resolved amicably. Learned counsel submits that in the complaint petition there is an allegation that one of the brothers Sudhir Kumar Srivastava (accused no.1) has breached this agreement by executing sale deed of plot no.1294 measuring area 4 dhur which is equivalent to $1/3^{\text{rd}}$ of the entire area of land which was subject matter of the agreement among the three brothers.

Learned counsel submits that so far as these two



petitioners are concerned, they have purchased the land falling in the share of accused no.1 for consideration and under bona fide belief without there being any knowledge of the agreement and affidavit allegedly executed by accused no.1 promising his other two brothers that the land shall not be sold in this manner. Submission is that in any case these two petitioners have not committed any act of cheating so that to be brought within the scope and ambit of Section 420 of the Indian Penal Code.

Learned APP representing the State submits that these two petitioners have got executed the sale deed from one of the brothers which is in the breach of the agreement executed by three brothers among themselves.

This Court has perused the complaint petition and the depositions of the enquiry witnesses on the basis of which the learned Magistrate has taken cognizance. In the opinion of this Court, the petitioners being the purchasers of the land in question from one of the brothers to the extent of his share have not committed any act of cheating and there is no allegation at all in the complaint petition which may constitute such an offence.

This Court finds that in fact the whole case of the complainant-opposite party no.2 is based on the agreement executed by the three brothers and the promises made to each other which have



been allegedly breached by one of the brothers. If one of the brothers has breached the agreement and executed the sale deed in favour of these two petitioners for consideration, no case under Section 420 of the Indian Penal Code is made out against these petitioners. This Court also finds that another brother Rajnish Kumar Srivastava has neither joined the complaint nor his name appeared in the column of witnesses. In the totality of the circumstances, this Court is of the view that continuance of the criminal proceeding as against these two petitioners would only be an abuse of the process of the Court.

The impugned order in so far as it relates to the petitioners is quashed and the application is allowed.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.10.2017
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