

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.2707 of 2014

Arising out of P.S. Case No.1137 Year 2012 Thana SARAN COMPLAINT CASE District SARAN

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1. Prasoon Daut Jain S/o Late Pushpa Dutta Jain Resident of Mohalla Daulatganj, P.S. Bhagwan Bazar, District Saran at Chapra
 2. Smt. Asha Jain W/o Prasoon Daut Jain Resident of Mohalla Daulatganj, P.S. Bhagwan Bazar, District Saran at Chapra

.... Petitioners

Versus

1. The State of Bihar
2. Shyam Sundar Prasad S/o Late Dewarika Prasad Resident of Mohalla East Dahiyawan, P.S. Chapra Town, District Saran at Chapra

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Radha Mohan Singh, Advocate Mr. D. N. Singh, Advocate
For the State	:	Mr. Ajay Kumar No.I, APP
For O.P. No.2	:	Mr. Ram Suresh Roy, Sr. Advocate Mr. Rajesh Kr. Singh, Advocate Mr. Anant Kr. Bhaskar, Advocate Mr. Sanjay Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 17-07-2017

This application is filed for quashing order dated 09.08.2012, passed by learned Judicial Magistrate, 1st Class, Saran at Chapra in Trial No.4018 of 2012, arising out of Complaint Case No.1137 of 2012 whereby he has taken cognizance of the offence under Section 406 of IPC.

2. The complainant, namely, Shyam Sundar Prasad filed this complaint case against the petitioners and other accused alleging therein that there was an agreement between complainant and one late Sadhu Tiwary, Manager of the petitioner Prasoon Daut Jain in the year 1995 for sale of a particular piece of land and in total he had



advanced Rs.2,00,000/- and for another plot given Rs.6,00,000/- to Sadhu Tiwary. Thereafter he requested Vijay Kumar Tiwary, son of Sadhu Tiwary to get the sale deed executed with respect to those lands but on 26.03.2012 and on 30.03.2012, the petitioners executed sale deed in favour of accused no.4, Rajan Hrishikesh Chandra.

3. Learned counsel for the petitioners submits that there was no any agreement for sale with the petitioners who have got the right and title over the land concerned. It is an admitted position that these petitioners had not given any power of attorney to Sadhu Tiwary and they have no knowledge about taking of any money by Sadhu Tiwary, moreover he had no authority to enter into an agreement for sale with respect to their land that too is not a registered agreement. Taking the entire allegation even as true, there is no entrustment of any money with the petitioners, so no case under Section 406 IPC is made out against these two petitioners.

4. Learned counsel appearing on behalf of complainant-opposite party no.2 submits that in fact Sadhu Tiwary was the Manager of these petitioners, who used to reside at different place and on behalf of the petitioners, he entered into an agreement for sale of two pieces of land and altogether had taken Rs.8,00,000/- in advance. For one piece of land for which Rs.2,00,000/- was given in advance and possession too was given to complainant. They were running their



shop in this plot.

5. Having considered rival submissions on behalf of both sides I find that the admitted case of the complainant is that there was an agreement with late Sadhu Tiwary for purchasing land having right and title vested in petitioners but thereafter the accused persons sold the land to some other person, so in this backdrop of the fact as narrated in the complaint petition whether a case of criminal breach of trust is made out or not? So first of all let us look at the provision of criminal breach of trust enumerated in Section 405 of the Indian Penal Code. It is quoted herein below:

"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"."

6. Two elements are necessary to constitute this offence, first, entrustment of any property in any manner or with dominion over the property secondly, the person with whom such entrustment is made by the other, dishonestly misappropriates that property or converts to his own use or dishonestly uses or disposes that property in violation of any direction of law as prescribed therein according to



which such trust is required to be discharged. In the backdrop of the fact of this case, as stated in the complaint, this Court does not find entrustment of any money with the petitioners. There is no legal sanctity of any agreement for sale in between Sadhu Tiwary and the complainant with respect to land of petitioners creating any legal liability upon them for executing sale deed in favour of the complainant, so even taking the entire allegation as true, as stated in the complaint petition, no prima facie case under Section 406 IPC is made out, therefore, the order taking cognizance dated 09.08.2012 and subsequent criminal proceeding in Trial No.4018 of 2012, arising out of Complaint Case No.1137 of 2012 is hereby set aside.

7. In the result, the petition stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.07.2017
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