

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38244 of 2013

Arising Out of PS.Case No. -642 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

=====

1. Shyam Sundar Prasad Son Of Late Viveka Nand Resident Of Mohalla
Ranipur, Rasalpur, Police Station Mehdiganj, District Patna.

.... Petitioner

Versus

1. The State Of Bihar.
2. Sada Shiv Sada Bahar Son Of Late Rajesh Prasad Mohalla
Ranipurkhirki, Dhal Ke Necha, Police Station Mehandiganj, District
Patna.

.... Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Prabhat Kumar

For the Opposite Party/s : Mr. Pramod Kumar Pandey(App)

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

3 25-01-2017 Heard the parties.

The petitioner has filed this application invoking the
inherent power of this court for quashing the order dated
15.07.2013 passed by the Judicial Magistrate, Patna City in
Complaint Case No. 642 of 2013.

It appears that Opposite Party No. 2, namely, Sada
Shiv Sada Bahar filed a complaint case on the file of A.C.J.M.,
Patna City, alleging therein that this petitioner on the strength
of power of attorney entered into contract to transfer the land
measuring 7 dhur 10 Dhurki of plot nos. 2430 and 2431 for a
consideration amount of Rs. 4,10,000/-. This petitioner took an



amount of Rs. 1, 60, 000/- as earnest money and agreed to get the land transferred in the name of mother of the complainant. The complainant, subsequently, learnt that the land which was to be transferred in favour of his mother was not a raiyati land of the vendor rather it was a Khas Mahal land. The complainant requested the petitioner several times to return the money which was refused. The complainant has alleged that this petitioner or his vendor had or has no title over the land in question. The petitioner in collusion with others has duped him and his mother by taking the money. The learned C.J.M. after going through the complaint petition and statement of complainant on S.A. found prima facie case for the offence under Sections 420 and 504 I.P.C. and ordered for issuance of summons for the appearance of the petitioner.

The learned counsel for the petitioner submitted that the petitioner is a land broker and had taken money for getting the sale deed executed after receipt of entire consideration money amounting to Rs. 4, 10,000/-. The complainant did not pay the balance of consideration money and so the sale deed could not be executed in favour of the mother of the complainant. The nature of dispute between the parties is purely a civil dispute and the complainant has remedy to recover the



money only by filing the civil suit. The learned court below has not considered this aspect and passed the impugned order in mechanical way without applying its judicial mind.

The learned APP for the State as well as learned counsel for the informant, on the other hand, submitted that this petitioner had no right and title over the land in question and he has cheated the complainant and his mother by taking money. The order taking cognizance is based on material on record and it requires no interference.

On perusal of complaint petition and documents on record, I find that the petitioner admittedly took amount of Rs. 1,60,000/- in cash out of total consideration of Rs. 4,10,000/-. He executed the deed of agreement on 30.04.2011 agreeing to get the land transferred in favour of the mother of the complainant within five months and fifteen days. The petitioner, admittedly, had no right and title over the land to be conveyed. He is a middleman and took money misrepresenting the fact that the said land is a raiyati land. The court below considering the element of cheating the mother of complainant and also the allegation of abusing when the money was demanded by the complainant, took cognizance of offence against the petitioner.



Keeping in view of the fact that there were sufficient materials on record to proceed with the case, the Court is of the opinion that the learned Judicial Magistrate has rightly taken cognizance of offence.

As such I do not find any merit in the petition. Accordingly, this petition stands rejected.

(Sanjay Kumar, J)

ajaypd./-

U		T	
---	--	---	--

