

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.52132 of 2013

Arising Out of PS.Case No. -871 Year- 2008 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Malti Devi W/O Late Nathuni Mahto Resident Of Pitambra Mandir Colony (Arfabad Colony), P.O.- Gulzarbagh, P.S.- Alanganj, Dist- Patna
 2. Awadh Nath Prasad S/O Late Nathuni Mahto Resident Of Pitambra Mandir Colony (Arfabad Colony), P.O.- Gulzarbagh, P.S.- Alanganj, Dist- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Basant Kumar Son Of Late Nanhak Lal R/O Mohlla- Naya Gon, P.O.- Gulzarbagh, P.S.- Alamganj, Dist- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar

For the Opposite Party/s : Mr. Rajiv Nayan

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date: 01-08-2017

Learned counsel appearing for the petitioners submits that during pendency of this application petitioner no. 1, Malti Devi has died, and as such, this application has become infructuous against her.

In view of the above, the application stands dismissed as infructuous as against petitioner no. 1.

Heard learned counsel for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 05.03.2009, passed by Judicial Magistrate, 1st Class, Patna City, in C. A. Case No. 871 of 2008, whereby cognizance has been taken



against the petitioner for the offence under sections 420, 406, 504, 323 of the Indian Penal Code.

The contention of the learned counsel for the petitioner is that no offence against the petitioner is disclosed and the present prosecution has been instituted with mala fide intention for the purposes of harassment. It is further submitted that an agreement for sale was executed on 03.07.2001 with specific averment therein to get the sale deed executed within six months. At the time of agreement Rs. 1,00,000/- was paid, but complainant failed to make payment of the balance amount, and as such, no agreement was executed. Title Suit No. 64 of 2010 is pending between the parties. The submission is that the dispute is purely civil in nature and continuance of the present criminal proceeding is an abuse of the process of the Court. In support of the submissions, learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court reported in *(2005) 13 Supreme Court Cases 699*.

A counter affidavit has been filed on behalf of the opposite party no. 2 wherein copy of the agreement for sale has been annexed. Perusal of the same shows that petitioners have received the payment of the balance amount on different dates and have put signatures.

From perusal of the material on record and looking into



the facts of the case at this stage, it cannot be said that no offence is made out against the petitioners. From Annexure-A to the counter affidavit filed on behalf of the opposite party no.2 it appears that petitioners have received payment of the balance amount on different dates. The submissions made on behalf of the petitioner relate to the disputed questions of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under section 482 Cr. P.C. Only a prima facie satisfaction of the Court about the existence of sufficient ground to proceeding in the matter is required. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of *R.P. Kapur Vs. State of Punjab, A.I.R. 1960 SC 866*, *State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426*, *State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192*, *Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283* and recently in *A.R.C.I. Vs. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348*. The submissions made by the learned counsel for the petitioners call for adjudication on pure questions of fact which may be adequately gone into by the trial Court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. The disputed defence of the accused cannot be considered at this stage. The judgment, cited above, is on different



set of facts and as such the same is not applicable in the facts and circumstances of the present case. Moreover, the petitioners have got a right of discharge through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the trial Court. The prayer for quashing the order taking cognizance is refused.

The application accordingly stands dismissed.

(Arvind Srivastava, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	21.06.2017
Uploading Date	03.08.2017
Transmission Date	03.08.2017

