

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46893 of 2013

Arising Out of PS.Case No. -439 Year- 2011 Thana -AURANGABAD COMPLAINT CASE
District- AURANGABAD

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Ajit Kumar Karn S/O Sri Jagdish Narayan Lal R/O Village- Tarar, P.O.-
Tarar, P.S.- Daudnagar, District- Aurangabad (Bihar). At Present Mohalla-
M.M. 46 Sector-D, I.L.D.-1 Colony, Lucknow (U.P.) Pin Code- 2260012

.... Petitioner.

Versus

1. The State Of Bihar
2. Brijnandan Singh S/O Sri Vishunu Dev Singh R/O Village- Imamganj,
P.O.- Tarar, P.S.- Daudnagar, District- Aurangabad (Bihar).

.... Opposite Parties.

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Appearance :

For the Petitioner : Mr. Prakash Chandra Jha, Advocate.
For the State : Mrs. Renuka Ratnakar, A.P.P.
For the Opposite Party No.2 : Mr. Sunil Kumar Debey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

3 24-05-2017 Heard the parties.

2. The Petitioner has prayed for quashing the order dated 21.05.2013 passed by the Judicial Magistrate, 1st class, Daudnagar, Aurangabad, in Complaint Case No.439 of 2011, by which and whereunder he having found prima facie case under Sections 420, 406, 467 and 468 of the Indian Penal Code against the petitioner ordered to issue process against the petitioner so that the attendance of petitioner could be procured for the trial .

3. The complainant/opposite party no. 2 filed Complaint Case No.439 of 2011 against the petitioner mentioning



therein that the petitioner executed an agreement for sale on 03.06.2004 in respect of his land and agreed to sell the land to the complainant and the petitioner took more than Rs.5 lacs on different dates from the complainant but he did not execute absolute sale deed nor returned the amount to the complainant. Accordingly, the complainant/opposite party no.2 lodged the aforesaid Complaint Case.

4. The court below inquired into the allegation made in the complaint petition against the petitioner and vide order dated 21.05.2012 dismissed the aforesaid complaint case holding that the dispute of the parties was of civil nature. The order dated 21.05.2012 was challenged before the learned Sessions Judge, Aurangabad, in Criminal Revision No.68 of 2012 and the learned Sessions Judge, Aurangabad, set aside the aforesaid order dated 21.05.2012, directing the court below to hear the matter afresh and pass necessary order in accordance with law. The learned Sessions Judge, Aurangabad, set aside the aforesaid order dated 21.05.2012 on two grounds. Firstly, the inquiring court had got no jurisdiction to examine the complainant as a witness and, secondly, the inquiring court had not given any reason of dismissal of the aforesaid complaint petition. Moreover, in view of the direction given by learned Sessions Judge, Aurangabad, vide order dated



19.03.2013 passed in Criminal Revision No.68 of 2012, the learned court below passed the impugned order by which he took cognizance of the offence under the aforesaid Sections against the petitioner as per direction of the learned Session Judge, Aurangabad.

5. Learned counsel appearing for the petitioner submits that the facts of the complaint case do not disclose any offence and the learned court below rightly dismissed the complaint petition but due to direction of the learned Sessions Judge, Aurangabad, the learned court below took cognizance of the offence against the petitioner without applying his judicial mind. He further submits that the facts, disclosed in the complaint petition, constitute a dispute of civil nature. He further submits that, moreover, the father of the petitioner had already executed sale deed in favour of the father of the complainant which is evident from Annexure-7 to the petition but the complainant with malafide intention filed the above stated complaint case.

6. Learned counsel appearing for the opposite party no.2 submits that there is no illegality and irregularity in the impugned order and, there is no scope for this Court to exercise the power under Section 482 of the Cr.P.C.

7. It is an admitted position that the opposite party no.2



filed the Complaint Case No.439 of 2011 with the allegation against the petitioner that the petitioner having receipt of more than Rs.5 lacs did not execute sale deed in his favour and, thereafter, the complainant gave legal notice to him and filed present case.

8. In my view, the learned counsel for the petitioner rightly submitted that the facts of the complaint petition disclose the dispute of civil nature because there is no element of criminality in the averments of the complaint petition. Furthermore, I am of the opinion that the learned court below rightly dismissed the complaint petition but again took the cognizance of the offence against the petitioner under the influence of the order of learned Sessions Judge, Aurangabad. Therefore, in the aforesaid circumstance, I have no option except to quash the order dated 21.05.2013 passed by the Judicial Magistrate, 1st class, Daudnagar, Aurangabad, in Complaint Case No. 439 of 2011.

9. Accordingly, this petition is allowed and the impugned order dated 21.05.2013 passed in Complaint Case No. 439 of 2011 by the Judicial Magistrate, 1st class, Daudnagar, Aurangabad, is hereby quashed.

(Hemant Kumar Srivastava, J)

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