

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41496 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SITAMARHI

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1. Manju Devi, w/o Rajendra Singh,
 2. Rajendra Singh, s/o late Chandradeep Singh, both resident of village- Harnahiya, Tola Jalsi, P.S.- Sahiyara, District- Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar,
2. Shail Devi, w/o Ramnath Pd. Singh, resident of village- Kharsan, P.S.- Riga, District- Sitamarhi

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar, Advocate
Mr. Birendra Kumar, Advocate
For the Opposite Party/s : Mr. Udai Pratap Singh, APP
Mr. Pushpendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 12-09-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 21.05.2011 passed by the Judicial Magistrate, 1st class, Sitamarhi, in Complaint Case No.266 of 2011/Tr. No.2527 of 2011 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 420 Indian Penal Code.

2. It has been submitted on behalf of the petitioners that the petitioners are cousin brother and sister-in-law (Bhabhi) of the Complainant. It is alleged in the Complaint Petition that the accused persons (petitioners) told the Complainant to come to Dumra for loan



and on their request the Complainant went to Dumra on 05.04.2011 and pasted photograph on the document and appeared before the Officer as said by the accused persons. She put her signature and thumb impression and was told by the petitioner that within a week loan amount will be sanctioned. But, loan was not sanctioned. Husband of the Complainant at that time was not present in the house. He used to reside outside to earn livelihood. When the husband of the Complainant returned home, he came to Registry Office and obtained certified copy and came to know that petitioners have got sale deed executed by her of the lands in absence of husband of the Complainant.

3. Counsel for the petitioner has submitted that the aforesaid sale deed was executed by the Complainant on 05.04.2010. Sale deed has been annexed as Annexure-2, which bears the signature and photograph of the Complainant as well as purchaser. Thereafter, on 26.05.2010, Title Suit was filed by father of the Complainant Vide Title Suit No.154 of 2010 for setting aside the aforesaid said deed. Thereafter, after lapse of about more than eleven months instant complaint was filed by the Complainant on 05.03.2011. Land has been mutated in favour of purchaser (petitioner No.1) and he is getting rent receipts. The Court below by the impugned order after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 420 Indian Penal Code.



4. Counsel for the Opposite Party No.2 has appeared and submitted that cheating has been done by the petitioners with the Complainant while her husband was away from the house.

5. Necessary ingredients of Section 420 Indian Penal Code is that there should be fraudulent or dishonest inducement of a person by deceiving him and the person so deceived should be induced to deliver any property to any person.

6. In the instant case from Annexure-2, it appears that Sale Deed has been executed by the Complainant in favour of the petitioner No.1 after taking due consideration money as mentioned in the Sale Deed and the Sale Deed bears the signature with photograph of the Complainant and the purchaser. From the copy of the Sale Deed annexed as Annexure-2, it appears that the same has been executed by the Complainant after understanding the contents. She has put her signature over the same. Moreover, for cancellation of the aforesaid Sale Deed, Title Suit has already been filed by father of the Complainant vide Title Suit No.154 of 2010. Instant complaint has been filed on 05.03.2011 after lapse of more than 11 months just to put pressure on the petitioners.

7. Therefore, this Court is of the view that nature of dispute, as mentioned in the Complaint Petition, is purely civil dispute and none of the ingredients of Section 420 Indian Penal Code is



applicable in the instant case. Learned Magistrate by the impugned order has found *prima facie* case against the petitioner in a mechanical manner. Learned Magistrate has not discussed any material during enquiry on which he *found prima facie* case against the petitioners.

8. In view of such, this Court is of the view that impugned order is not in accordance with law.

9. Accordingly, the impugned order dated 21.05.2011 passed by the Judicial Magistrate, 1st class, Sitamarhi, in Complaint Case No.266 of 2011/Tr. No.2527 of 2011, along with entire criminal proceeding against the petitioners is hereby quashed.

10. This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	04-10-2017
Transmission Date	04-10-2017

