

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35216 of 2014

Arising Out of PS.Case No. -3571 Year- 2008 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

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1. Smt. Sanju Kumari W/o Shri Bishundeo Ray
2. Bishundeo Rai S/o Late Gana Rai Both are Resident of Village Nilkanthpur, P.S. Mahua, District Vaishali.
3. Ram Jatan Singh S/o Late Sitaram Singh Resident of Rahimapur, P.S. Bidupur, District Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Mohan Pd. Sah S/o Late Shivshankar Sah Resident of Village Dighikala, P.S. Hajipur Sadar, District Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anupam Sinha

For the Opposite Party/s : Mr. Md.Ataur Rahman (App)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

7 06-09-2017 Heard the learned counsel for the petitioner, State and counsel appearing on behalf of the opposite party.

Counsel for the petitioner submitted that the controversy between the parties are pure and simple a civil dispute. Predominantly, a case of payment of Rs.2 lakhs in advance and for recovery thereof for which money suit is already pending. On the previous occasion, Mr. Kamal Nayan Chaubey, learned senior counsel appearing on behalf of the petitioner referring the various judgment of the Hon'ble Apex Court and submitted that the Court should exercise discretionary jurisdiction under Section 482



Cr.P.C., if there are materials to establish that the dispute is pure and simple civil dispute and has been given colour of criminal offence.

Counsel for the opposite party on the other hand submitted with reference to various documents that the intention of the petitioner right from very inception was to cheat the opposite party and as such this Court should not exercise discretion under Section 482 Cr.P.C.

It is true that the power under Section 482 has to be exercised very sparingly but when the situation cries out, the Court is required to step in and quash the criminal proceeding if it is given cloak of criminal offence. Various documents have been placed before this Court by the petitioner to substantiate that from the complain petition and the accompanying document, one cannot find that intention of the petitioner was to cheat from very inception. Otherwise, the petitioner could not have issued instrument of rectifying the typing error in the power of attorney, coupled with the fact that relying upon the said power of attorney. Certain transactions have been made in which this complainant opposite party is also a witness.

Without delving deep into factual aspect discussed above, I am constraint to remit the matter back to the Court concerned to



take a fresh decision on the application for discharge under Section 245 of the Cr.P.C. as from the order, it appears that the materials were not properly considered by the Court below while rejecting the petition under Section 245 Cr.P.C. and ends of justice would be served if the Court below considers the application for discharge a fresh and consider the issue with regard to the fact that the instant case whether a civil dispute has been given the colour of criminal offence or not? The order dated 10.01.2013 passed by learned trial Court in Complaint Case No.3571 (C) of 2008 and the order dt.29.03.2014 passed in Cr. Revision No.40 of 2013 are accordingly quashed and the case is remitted back to the trial Court to pass fresh order on the petition for discharge.

It is made clear that this Court has not expressed any opinion on the merit of the case. The Court below will pass fresh order on the application for discharge if application is filed on behalf of the petitioner along with copy of this order within one month. The petitioner is granted liberty to place on record all those materials and case law in support of his case as would be admissible under the law. The Court below will pass fresh order on such application under Section 245 Cr.P.C. on its own merit without being influenced by any observation in this case. For ends of justice, Court below is directed to take final decision within a



period of two months from the date of filing of such application by speaking order.

With the aforesaid observation, the application stands allowed to the extent indicated above.

(Anil Kumar Upadhyay, J)

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