

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17568 of 2014

Arising Out of PS.Case No. -2195 Year- 2009 Thana -MUZFFARPUR COMPLAINT CASE
District- MUZAFFARPUR

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Md. Islam, son of late Md. Hanif, village Yogiya, P.S. Orai, Distt.
Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Geeta Devi, W/o Ram Daheen Sahni, R/o Yogia, P.S. Aurai, Distt.
Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shyam Bihari Singh, Advocate.

For the Opposite Party/s : Mr. Ram Naresh Roy, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 04-10-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 20.12.2013 passed by the learned 1st Additional Sessions Judge, Muzaffarpur, in Criminal Revision No. 244 of 2012 by which he has affirmed the order dated 17.8.2012 passed by the learned Judicial Magistrate, 1st, Class, Muzaffarpur, in connection with Complaint Case No. 2195 of 2009, Trial No. 476 of 2012 whereby and whereunder the learned Magistrate has rejected the petition of discharge filed on behalf of the petitioner and others.

2. The complainant has alleged in the complaint



petition that petitioner entered into agreement with her for sale of 3 Katthas of land @ Rs. 23,000/- per kattha. The complainant made payment of entire consideration money on different dates as mentioned in the complaint petition and, thereafter, the petitioner gave possession of the land to the complainant on 2.7.2006. The complainant has also constructed house on the aforesaid land. The petitioner did not execute sale deed even after taking the consideration amount. The complainant has enclosed the receipt of making payment to the petitioner which has been annexed as Annexure-2.

3. The learned Magistrate vide order dated 17.08.2012 has found sufficient material to frame charge against the petitioner. The aforesaid order was challenged by the petitioner before the learned 1st Additional Sessions Judge, Muzaffarpur, vide Cr. Revision No. 244 of 2012, which was rejected vide order dated 20.12.2013.

4. The learned Sessions Judge has mentioned in the order dated 20.12.2013 that the petitioner has not executed the sale deed even after receiving the consideration money and, therefore, there was dishonest intention of the petitioner in not executing the sale deed even after receiving the consideration money.

5. The learned Sessions Judge has further mentioned in the impugned order that offence of cheating is also made out as



after receiving the consideration money, the petitioner not executed the sale deed in question.

6. Heard learned counsel for the petitioner and learned counsel for the State.

7. Learned counsel for the petitioner has submitted that the petitioner has sold the aforesaid land to one Parmeshwar Sahni in the year 2011 after taking consideration money of Rs.2,55,000/- as the complainant did not pay the remaining amount in spite of issuance of registered letter to him. As per complaint petition, the agreement for sale was made in the year 2006 and payment of entire consideration money as per agreement was made by the complainant to the petitioner on various dates till 30.07.2007. The receipts showing the payment of amount by the complainant to the petitioner supports the case of the complainant that petitioner has received the total consideration amount of Rs.69,000/-.

8. The counsel for the petitioner has further submitted that the complainant has filed Title Suit No. 665 of 2014 against the petitioner which is pending. He has further submitted that for the same cause of action, both Criminal Proceeding and Civil Proceeding can not proceed.

9. This Court is of the view that filing of Title Suit by the Complainant in the year 2014 will not debar the jurisdiction of the



criminal court from proceeding in the case for the offence of cheating and dishonest intention, which was found by the court below on the basis of evidence of the witnesses examined before charge under Section 244 Cr. P.C. Both the Courts have found sufficient material to proceed in the Criminal case and framing charge against the accused person (petitioner).

10. Therefore, this Court does not find any illegality in the impugned orders dated 20.12.2013 passed by learned 1st Additional Sessions Judge, Muzaffarpur, in Cr. Revision No. 244 of 2012 as well as the order of learned Magistrate dated 17.08.2012.

11. This Criminal Miscellaneous application is accordingly dismissed.

12. The court below will proceed in the case in accordance with law.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	13/10/2017
Transmission Date	13/10/2017

