

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29508 of 2012

Arising Out of PS.Case No. -453 Year- 2011 Thana -null District- PATNA

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1. Sri Sheo Chandra Singh, son of Late Munna Singh @ Ram Chhabila Singh &
 2. Shambhu Kumar Singh, son of Sheo Chandra Singh, both are resident of village-Koshut, P.S.-Dhanarua, District-Patna at present residing at 110, Indra Nagar, Nainpura, P.S.-Patliputra, District and Town-Patna

.... Petitioners

Versus

1. The State of Bihar &
2. Sri Tuntun Lal @ Shivanand Gupta, son of Late Mohan Sao, resident of Mohalla-North Anandpuri, P.S.-Sri Krishnapuri, District-Patna.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr.Ajay Kumar Thakur, Advocate Mr. Dudhnath Singh, Advocate Mr. Amit Kumar, Advocate
For the Opposite Parties	:	Mr. Jharkhandi Upadhyay, APP
For the Informant	:	Mr. Bam Bahadur Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 26-04-2017

Heard both the parties.

2. Petitioners seek quashing of order dated 27.05.2011 passed by Judicial Magistrate, Ist Class, Patna (Sadar) in Complaint Case No.453C of 2011 being trial No.2035 of 2011 whereunder, finding prima-facie case for the offence under Sections 406 and 420 of the IPC and 138 of the Negotiable Instrument Act, the petitioners were summoned.

3. The petitioners are neighbours of Opposite Party No.2. They expressed their desire to sell 15 dhurs of land. As per negotiation they entered in to an agreement and agreed to execute sale



deed for a total consideration of Rs.11,25,111/-. The complainant paid an amount of Rs.1,11,111/- to the petitioners as advance and the petitioners agreed to execute sale deed within six months. It is further alleged that the petitioners received a total sum of Rs.900111/- from the complainant in different instalments and extended the period of executing sale deed in favour of Opposite Party No.2. Thereafter, the petitioners started evading from executing sale deed. The petitioners further agreed to return the earnest money. They tendered a cheque for an amount of Rs.5,00000/- to the complainant which was presented before the Bank but on account of insufficient fund, the cheque was not honoured. The complainant (OP No.2) again presented the said cheque on subsequent dates but again it was not honoured. The complainant gave a legal notice and thereafter filed the complaint case. The complainant besides himself, examined two witnesses. After enquiry, finding prima facie case, the Magistrate ordered for issuance of summons as per impugned order.

4. The learned counsel for the petitioners submits that the dispute between the parties is purely a civil dispute for which the complainant (Opposite Party No.2) has already filed a civil suit for specific performance of contract. The complainant case is not maintainable on the complaint without exhausting the legal procedure, has filed the complainant case. The petitioners are ready to return the



money. The sale deed in question could not be executed on account of the latches on the part of the complainant and so no offence under Section 420 or 406 of the IPC is made out.

5. The counsel for the complainant, on the other hand, submitted that the petitioners malafide gave the cheque for an amount of Rs.5,00000/-, although they had no money in the account. Both the petitioners duped the complainant and taken the money with the sole purpose to cheat the complainant and usurp the money.

6. On going through the submission of both the parties and perusing the material on record, I find that both the petitioners entered into an agreement agreeing to transfer land measuring 15 dhurs for a total consideration of Rs.1125111/-. They took an amount of Rs.900111/- till 12.11.2008 in different instalment and thereafter started evading the execution of the sale deed in favour of the complainant. The petitioner without having sufficient fund in his account issued a cheque for an amount of Rs.5,00000/- in favour of the complainant which on presentation was dishonoured by the bank. From the lower court record, it appears that the petitioners were ordered to be released on anticipatory bail as they agreed to return the entire balance amount along with statutory interest within a period of six months as per order of this Court passed on 14.10.2011 in Cr.Misc.No.32171 of 2011. The Magistrate finding ingredients of



cheating and committing breach of trust has ordered for issuance of summons against the petitioners. The petitioners have assailed the order of issuance of summons which was passed after examining the complainant and witnesses, in support of the complaint case. The Code of Criminal Procedure is a self contained code and there are other remedies available to the petitioners. The Court is of the opinion that it is not a fit case for quashing/interfering with the order of issuance of summons to the petitioners. I do not find any merit in the present petition.

7. The petition stands dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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