

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37207 of 2013

Arising Out of PS.Case No. -230 Year- 2010 Thana -SULTANGANG District- PATNA

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1. Khurshid Alam, S/O Anwarul Islam, R/O Mohalla- Mohammadpur, Professor Colony, Shahganj, P.S- Sultanganj, Distt- Patna
 2. Nazhat Bano, W/O Kurshid Alam, R/O Mohalla- Mohammadpaur, Professor Colony, Shahganj, P.S- Sultanganj, Distt- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Sajjad Ali, s/o not known, r/o Mohalla- Dariyapur Koiritola, P.S- Pirbhore, Distt- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rashid Rais, Advocate.

For the Opposite Party/s : Mr. Sanjay Kumar Sharma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 04-04-2017

1. The Petitioner seeks quashing of the order dated 8.7.2013 passed by the Judicial Magistrate, 1st Class, Patna, in Sultanganj P.S. Case No. 230 of 2010 (G.R. No. 2872 of 2010) by which he has refused to discharge the petitioners for the offence under Section 406/34 of the Indian Penal Code.

2. Heard learned counsel for the petitioners and the State.

As per written report wife of the informant entered into an agreement with petitioner No. 1 for purchase of land for a consideration amount of Rs.85,200/-, out of which, Rs.50,000/- was



paid to the petitioners and Rs.35,200/- was to be paid after execution of sale deed. It is alleged that the informant approached the petitioners for execution of sale deed several times, but petitioner always postponed on one pretext or the other and finally refused to execute the sale deed in favour of wife of the informant Nusrat Parween and, hence, the petitioners have misappropriated the amount of Rs.50,000/- of the informant.

3. It has been submitted on behalf of the petitioners that they have sent legal notice to the informant on 16.4.2005 and 22.7.2005 for making payment of the remaining amount, but he did not turn up which is apparent from Annexure 3 and 4, stating therein that the petitioners have changed their mind to execute the sale deed with regard to the aforesaid land.

4. The learned Magistrate has mentioned in the impugned order that on the basis of police report and the documents sent with it, he found sufficient material to proceed against the accused persons after framing of charge and rejected the petition for discharge under Section 239 Cr. P.C.

5. Section 239 Cr. P.C. clearly speaks that the Magistrate shall discharge the accused if he considers the charge against the accused to be groundless, if upon considering the police report and the document sent with it under Section 173 Cr. P.C.



6. In the instant case, it is an admitted position that the police after investigation found the case true and submitted charge sheet against the petitioners and, thereafter, cognizance has been taken under Sections 406/34 of the Indian Penal Code. The Magistrate has mentioned in the impugned order that he found sufficient material on the basis of police report and the documents sent with it to proceed against the petitioners in the case for framing of charge and rejected the petition under Section 239 Cr. P.C.

7. Therefore, this Court does not find any illegality in the impugned order.

8. The application stands dismissed.

9. The trial court is directed to proceed in the trial in accordance with law.

(Sanjay Priya, J)

S.Ali/-

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