

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43307 of 2013

Arising Out of PS.Case No. 4 Year- 2012 Thana -Maner District- PATNA

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1. Mahmood Ahmad @ Dr. Mahmood Ahmad S/o Late Saiyad Shah Resident of Village- Maner Sharif, Khankah Mohalla, P.O & P.S- Maner, District- Patna, presently residing at Mohalla- Mittanghat, Patna City, P.S- Khajekalan, Town & District- Patna.
 2. Hassan Mahmood Ahmad @ Hassan Mahmood S/o Dr. Mahmood Ahmad resident of Village- Maner Sharif, Khankah Mohalla, P.O & P.S- Maner, District- Patna, presently residing at Mohalla- Mittanghat, Patna City, P.S- Khajekalan, Town & District- Patna.
 3. Fatma Mahmood Ahmad D/o Dr. Mahmood Ahmad, resident of Village- Maner Sharif, Khankah Mohalla, P.O & P.S- Maner, District- Patna, presently residing at Mohalla- Mittanghat, Patna City, P.S- Khajekalan, Town & District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Mohd. Jawed S/o Mohd Jalil, resident of Maner Sharif, Ali Shahid Mohalla, P.O & P.S- Maner, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. R.S. Pradhan Mr. Ranjeet Choubey Mr. Jainender Pradhan
For the Opposite Party/s	:	Md. Helal Ahmad,

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 25-07-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 06.09.2012 passed by the learned Judicial Magistrate, 1st Class, Danapur, Patna in Maner P.S. Case no. 4 of 2012 (arising out of Complaint Case no. 1167(C) of 2011) by which summons have been issued against the petitioner after finding a prima facie case to be made out under Sections 406, 420/34 of the Indian Penal Code.



2. Heard both sides.

3. A complaint case was filed on the file of A.C.J.M., Danapur by O.P. no. 2 alleging inter alia that the accused persons (petitioners before this Court) had entered into an agreement for sale of their land with the complainant after taking an amount of Rs. 5 lacs as earnest money, but they failed to execute the sale deed in his favour. The complainant gave legal notices and thereafter filed the complaint case. A copy of complaint petition was forwarded to Officer-In-Charge of Maner P.S. for instituting a case under Section 156 (3) of the Cr.P.C. and submitting a report after investigation. The matter was investigated and a police report was submitted. The Magistrate after going through a police report and materials in case diary took cognizance under the aforesaid Sections.

4. It has been submitted that the dispute between the parties relates to an agreement for sale of land. The complainant deliberately and intentionally did not get the sale deed executed on payment of balance of consideration money. The complainant has filed a Title Suit no. 355 of 2011 in the court of Sub-Judge, 1st, Danapur seeking relief for decree of specific performance of contract against the petitioner and in alternative, he has sought relief for refund of earned money amounting to Rs. 5 lacs with interest @12% per annum from the date of agreement. The petitioners had filed



A.B.P no. 2325 of 2012 wherein they were directed to pay an amount of Rs. 2,50,000/- to the informant before surrendering in court below. The petitioners were further directed to pay remaining amount of Rs. 2,50,000/- to the O.P. no. 2 within a further period of one month. The petitioners have deposited the entire amount of Rs. 5 lacs as per demand draft dated 18.07.2012 and 01.10.2012. The dispute between the parties is purely a civil dispute and the complainant (O.P. no. 2) would get relief in the civil suit in the event of proving his case of specific performance of contract. The Magistrate has passed the impugned order without applying judicial mind and so considering the civil nature of dispute, the impugned order is fit to be quashed.

5. The learned counsel for the O.P. no. 2 as well as A.P.P. submit that the criminal prosecution of this petitioner is not barred on account of pendency of civil case. Both cases stand on different footing and so there is no illegality in taking cognizance against the petitioner.

6. Considering the facts and circumstance of the case and also examining the attending facts, this Court is of the view that the dispute between the parties is purely a civil dispute. The complainant has filed two cases at the same time. He, firstly, filed Title Suit No. 355 of 2011 on the file of Sub-Judge, 1st, Danapur on



08.12.2011 and after four days i.e. on 12.12.2011, he filed the present complaint case. In title suit he has prayed for refund of earned money and interest @ 12% over the said amount from the date of an agreement. The petitioners have already deposited two drafts for total amount of Rs. 5 lacs before the court below in compliance of direction given in anticipatory bail application. In view of pendency of civil case, the continuation of criminal proceeding would be abused of process of the Court.

7. In view of the above facts the order dated 06.09.2012 passed by the learned Judicial Magistrate, 1st Class, Danapur, Patna in Maner P.S. Case no. 4 of 2012 (arising out of Complaint Case no. 1167(C) of 2011) and criminal prosecution of this petitioner in said case is quashed and the Cr. Misc. application is allowed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	27.07.2017
Transmission Date	27.07.2017

