

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.26831 of 2012**

Arising Out of PS.Case No. -657 Year- 2010 Thana -null District- PATNA

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1. Ram Dayal Rai Late Kuldeep Gope Bangali Tola,Ps-Jakkanpur,District-Patna.  
2. Ram Narain Rai Late Kuldeep Gope Bangali Tola,Ps-Jakkanpur,District-Patna.  
..... Petitioner/s

Versus

1. The State Of Bihar  
2. Vijay Singh Late Kesho Singh Nepura,Ps-Asthawan,Distt.Nalanda  
3. Smt.Indu Devi Wife Of Vijay Singh Nepura,Ps-Asthawan,Distt.Nalanda.  
..... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. R. P. Sinha, Advocate.  
Mr. Munna Kumar, Advocate  
For the State : Mr. Nawal Kishore Prasad, APP

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**Date: 29-08-2017**

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

2. This application has been filed for quashing the order dated 07-01-2011 passed by learned Judicial Magistrate-Ist Class, Patna City in Complaint Case No. 657 of 2010 by which, the learned Magistrate after holding inquiry u/S 202 Cr.P.C. has found prima facie against the petitioner for the offence under Sections-420 of the IPC.

3. It is alleged in the complaint petition that the petitioners entered into an agreement dated 15-03-2010 for sale of the land with the complainant after making payment of Rs. 5,00,000/ (five lacs) by cheque and Rs. 4,00,000/- (four lacs) in cash total 9,00,000/- (nine lacs) but ultimately, the sale deed was not executed. The complainant made demand of his money but the same was not returned. Thereafter, the complaint has been filed.

4. The court below after holding inquiry, found prima facie case for



the offence under Sections-420, 323, 506 of the Indian Penal Code.

5. Counsel for the petitioner(s) has submitted that the complainant has filed Money Suit No. 07 of 2013 in the court of Sub Judge-IIInd, Patna for recovery of the aforesaid amount of Rs. 9,00,000/- (nine lacs). In the said Money Suit, after issuance of notice, petitioner(s) have appeared and filed written statement. Counsel for the petitioner has submitted that in terms of order dated 13-08-2012 passed in Cr. Misc. No. 9907 of 2012 by which petitioner was granted anticipatory bail, the petitioner(s) have deposited Rs. 5,00,000/- (five lacs) in the court below and they have no objection, if, the aforesaid money is released in favour of the complainant (O.P. No. 2).

6. On 07-08-2017, the learned counsel for the opposite party No. 2 has sought time to take instruction from his client whether he is ready to accept Rs. 5,00,000/- (five lacs) deposited by the petitioner in the court below in terms of order dated 13-08-2012 passed by this Court in Cr. Misc. No. 9907 of 2012. It is also pointed out during the hearing that petition has been filed on 23-07-2015 to the effect that petitioner No. 2 Ram Narayan Rai has died.

7. The counsel for the petitioners has submitted that he is not pressing this petition in respect of petitioner No. 2 who is already dead. As such, the petition on behalf of petitioner No. 2 is dismissed as not pressed.

8. Today, counsel for opposite party No. 2 is not present in court.

9. This court after looking into the nature of allegation in the complaint, finds that there is dispute with regard to alleged payment of Rs.



9,00,000/ (nine lacs) to the complainant by the petitioner for execution of the sale deed vide agreement dated 15-03-2010. It is an admitted position that the complainant has already filed Money Suit No. 07 of 2013 against the petitioners for recovery of aforesaid amount of Rs. 9,00,000/ (nine lacs) as mentioned in the agreement dated 15-03-2010. The petitioners have appeared in that suit and filed written statement. It is also apparent from the record that an amount of Rs. 5,00,000/- (five lacs) has been deposited by the petitioners in the court below at the time of grant of anticipatory bail in terms of order, passed by this court vide order dated 13-08-2012 passed in Cr. Misc. No. 9907 of 2012.

10. In such circumstances, this court is of the view that since Money Suit has already been filed by the complainant, which is pending between the parties for recovery of the aforesaid amount, the continuance of this criminal prosecution is an abuse of the process of court and mere harassment to the petitioner.

11. Therefore, the impugned order of cognizance dated 07-01-2011 passed by learned Judicial Magistrate-Ist Class, Patna City in Complaint Case No. 657 of 2010 along with entire criminal prosecution against the petitioner No. 1 is hereby quashed.

12. Since the petitioner No. 2 has died and a petition dated 23.07.2015 has been filed for deleting his name, no order need be passed in respect of petitioner No. 2. The learned counsel will file necessary petition in this regard in the court below.

13. In the result, this Cr. Misc. petition is allowed.



14. Counsel for the petitioner has submitted that he has no objection, if, Rs. 5,00,000/- (five lacs) which has been deposited by the petitioner in the court below, is released in favour of the complainant. The court below is directed to issue notice to the opposite party No. 2 (complainant) and release the aforesaid amount of Rs. 5,00,000/- (five lacs), deposited by the petitioner in the court below in terms of order dated 13-08-2012 passed in Cr. Misc. No. 9907 of 2012 in favour of the complainant without any delay, preferably, within a period of three months from the date of receipt of this order.

**(Sanjay Priya, J)**

A.K.V./-

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