

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2330 of 2015

Arising Out of PS.Case No. -61 Year- 2014 Thana -GAYA COMPLAINT CASE District- GAYA

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Louky Yadav @ Loki Yadav Son of Late Baijnath Yadav Resident of Village -
Nehuta Tola Raja Bigha, Police Station - Dobhi, District - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar
2. Dilip Kumar Gupta Son of Late Baijnath Prasad Gupta Resident of Mohalla -
Sherghati (Darbar House), Police Station - Sherghati, District - Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No.-2
For the Opposite Party/s : Mr. APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 06-03-2017

Heard Mr. Manish Kumar No.-2, the learned counsel
for the petitioner and the learned Additional P.P. for the State.

2. The petitioner has filed this petition for quashing the
order dated 20.6.2014 passed in Complaint Case No. 61 of 2014/ Tr.
No. 47 of 2014 by which the learned Judicial Magistrate, 1st Class,
Sherghati, Gaya, dismissed the complaint petition of the complainant-
petitioner holding that no prima facie case is made out under sections
406, 420 and 467 of the Indian Penal Code and also prayed to quash
the order dated 16.12.2014 passed by the learned 5th Additional
Sessions Judge, Gaya in Criminal Revision No. 73 of 2014 by which
the learned Sessions Judge has dismissed the complaint petition



affirming the order dated 20.6.2014.

3. The complainant- petitioner filed a Complaint Case No. 61 of 2014 alleging therein that he had agreed to purchase 1. 1/8 decimals of land from one Deelip Kumar Gupta, situated in Sherghati Sumani Mohalla of khata no. 469 plot no. 1603/ 696 on consideration amount of Rs., 4, 80, 000/- on 4.11.2009. Deelip Kumar Gupta took advance of Rs. 2, 60,000/- and agreed to execute the sale deed in favour of the complainant- petitioner as and when remaining consideration amount is paid to him. The complainant further alleged that on 8.6.2012 the accused acknowledged the receipts of payment of money, but even thereafter he did not execute any sale deed.

4. The complainant and his witnesses were examined during the course of enquiry. The learned Judicial Magistrate, after perusing the evidence of the complainant and his witnesses, found that the complainant did not produce any original documents, nor prima facie case is made out on perusal of the evidence of the complainant and his witnesses and, accordingly, dismissed the complaint petition. The complainant preferred criminal revision and after hearing, the same was also dismissed.

5. Shri Manish Kumar, the learned counsel for the petitioner, submits that the complainant and his witnesses have stated about the fact that the opposite party no.2 took money on different



dates as consideration money for executing the sale deed, but from very inception of the case, the opposite party no.2 had intention to cheat the petitioner. It is further submitted that the petitioner had stated in paragraph-5 of the complaint petition that even original receipts acknowledging the money was kept by the accused and, therefore, there is no question of submitting original document in the court. Therefore, dismissal on the ground that no original document was furnished, is illegal. The revisional order is also perverse on the ground that the revisional court discussed the entire evidence very meticulously, which the court is not entitled to appreciate under the revisional jurisdiction. To find out a prima facie case the yardstick to appreciate the evidence is quite different to that of after trial, but from perusal of the orders and the record, I find that there is no substance in the submission of the learned counsel for the petitioner. The learned Magistrate looked into evidence and found that there is neither any document such as the deed of agreement nor other document to show that the accused ever agreed to sale his land or received part consideration money. Even the witnesses gave their contradictory evidence with regard to payment of advance to the accused and on the aforesaid facts, the complaint petition was dismissed. The revisional court also found that there is no illegality in the order of the learned Magistrate dismissing the complaint petition. I do not find any error



on face of the order.

6. Therefore, I find no merit in this quashing petition and accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

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CAV DATE	
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