

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35271 of 2016

Arising Out of PS.Case No. -98 Year- 2014 Thana -JEHANABAD COMPLAINT CASE District-
JEHANABAD

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Hiralal Mistri Son of Late Baleshwar Mistri resident of Village- Rukunpura, Police
Station- Ghosi in the district of Jehanabad.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 01-09-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 17.05.2016 passed by the learned Session Judge, Jehanabad in Criminal Revision No. 02 of 2015 whereby Criminal Revision filed against the order dated 20.12.2015 passed by learned Judicial Magistrate, 1st Class, Jehanabad in Complaint Case No. 98 of 2014 dismissing the complaint under Section 203 of Cr.P.C. has been rejected.

2. The case of the complainant, in brief, is that as back as in the year 2006 the complainant had approached to purchase a piece of land through a broker named Saiyad Sabir Alam and subsequently he handed over Rs. 1,64,000 towards the prospective purchase but finally



the said land could not be registered in favour of the complainant.

3. The petitioner has stated in his statement that he will be satisfied if his money is returned back. After holding inquiry under Section 202 of the Cr.P.C., the learned Judicial Magistrate 1st Class, Jehanabad, vide order dated 20.12.2014, dismissed the complaint holding the dispute to be of civil nature. The petitioner challenged the aforesaid order dated 20.12.2014 before the revisional court, but the revisional court also dismissed the revision petition, vide order dated 17.05.2016. The revisional court has held that a criminal case cannot be allowed to be instituted just in order to recover money.

4. Assailing the order passed by the revisional court, learned counsel for the petitioner has submitted that the complainant had fully supported the allegation made in the complaint and besides him three witnesses, namely, Shri Shiv Balak Paswan, Kamlesh Paswan and Manju Devi, who were examined in the course of inquiry, had also fully corroborated the case of the complainant. He has submitted that on the facts and in the circumstances of the case, the court below ought to have issued processes against the accused, on ingredients of the offences under Sections 406 and 420 of the Indian Penal Code are clearly attracted.

5. Per contra, Mr. Jharkhandi Upadhyay learned counsel for the State has submitted that the allegations made in the complaint do not



attract the ingredients of the offence under Sections 406 and 420 of the Indian Penal Code. He has submitted that even otherwise the instant petition under Section 482 of the Cr.P.C. is bad in law as it is in the nature of second revision, which is barred under Section 397(2) of the Cr.P.C.

6. I have heard learned counsel for the parties and perused the record.

7. From the averments made in the complaint, I find that there is nothing to show any fraudulent or dishonest inducement on the part of the accused Saiyad Sabir Alam due to which the petitioner had to handed over amount of money towards prospective purchase of land.

8. In **Murari Lal Gupta vs. Gopi Nath Singh [(2005)13 SCC 699]**, **Nageshwar Prasad Singh @ Sinha vs. Narayan Singh [(1998) 5 SCC 694]**, and **Dalip Kaur & Ors. Vs. Jagnar Singh [(2009) 14 SCC696]**, the Supreme Court has held that simple breach of contract or agreement of sale would not constitute an offence under Section 406 or Section 420 of the IPC. It has held that in a case arising out of breach of contract, the remedy would be under the civil law. It has also held that non-refund of the amount of would not constitute an offence of cheating or Criminal breach of trust.

9. Having regard to the ratio laid down by the Supreme Court in the aforementioned cases and also on the facts and in the



circumstances of the present case, I find no illegality in the order dated 17.05.2016 passed by the revisional court. The application is, accordingly, dismissed.

(Ashwani Kumar Singh, J)

khushbu/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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