

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53196 of 2017

Arising Out of P.S.Case No.153 Year- 2017 Thana -MOTIHARI TOWN District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Navneet Kumar @ Vicky Son of Suresh Prasad
 2. Rakesh Kumar @ Rakesh Gupta Son of Suresh Prasad Both Resident of Mohalla-Baniyapatti, P.S.-Motihari (Town), District-East Champaran

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioners : Mr. Anuj Kumar, Advocate

For the Opposite Party : Mr. Mukeshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

2 13-11-2017 Heard.

2. The petitioners apprehend arrest in connection with Motihari Town P.S.Case No.153 of 2017 pending in the Court of CJM, East Champaran at Motihari registered for an offence punishable under Sections 323, 327, 341, 379, 384, 387, 406, 420 and 120B/34 of the IPC and Section 138 of the NI Act.

3. The allegation as per FIR is that these two petitioners took an amount of Rs.7,00000/- (seven lacs) in two instalments for purchasing land in favour of complainant. It was agreed that the land measuring ten *katthas* would be purchased/transferred in favour of informant at the rate of Rs.1,00000/- (one lac) per *kattha* within a period of fifteen days on payment of balance



amount of Rs.3,00000/-. The petitioners neither got the document registered in favour of the complainant nor returned the money. The petitioners on repeated demand issued a cheque bearing no.50040204335 for an amount of Rs.7,00000/-. The informant presented the said cheque in bank which was dishonoured with an endorsement of insufficient fund. The accused persons in this way, cheated the informant and also committed breach of trust by retaining the said amount.

4. Learned counsel for the petitioners submits that from the allegation, no offence under Sections 420, 379, 384 and 406 of the IPC or 138 of the NI Act is made out. The dispute between the parties is purely a civil dispute for which informant has remedy by filing civil suit. It was further submitted that for the offence under Section 138 of the NI Act only a complaint case is maintainable.

5. The learned APP opposed the submissions.

6. On perusal of FIR and documents on record, I find that the petitioners without having any right title or possession over any land assured the informant to get a document executed and registered in favour of informant with respect to ten katha land. The petitioners took an amount of Rs. 7,00000/-. On repeated demand when the land was not transferred in favour of the informant, the informant started making the demand. The



petitioners issued a cheque for an amount of Rs.7,00000/- which on account of insufficient fund was dishonoured. The act of both the petitioners amounts to cheating as they without having any land had entered into an agreement with a false promise to get ten *katthas* of land transferred in his favour. The petitioners had no money in their account even then they fraudulently issued a cheque for an amount of Rs.7,00000/-.

7. Considering the specific allegation of cheating and committing breach of trust, I am not inclined to grant anticipatory bail to the petitioners. Prayer is rejected.

(Sanjay Kumar, J)

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