

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9860 of 2012

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Nand Kishore Bhagat @ Kishori @ Kishori Lal S/O Late Satya Narain
Bhagat Resident Of Village- Katra, P.S- Hajipur Town, District- Vaishali

.... Petitioner

Versus

1. The State Of Bihar
2. Sri Shashi Bhushan Singh S/O Sri Mani Kant Singh Resident Of
Village- Subhai, P.S- Hajipur Sadar, District- Vaishali.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Prabhat Ranjan, Advocate
For the Opposite Parties : Mr. Vinod Shankar Modi (APP)

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN
SHARMA**
ORAL ORDER

10 04-05-2017 This Criminal Miscellaneous has been filed for

quashing the order dated 23.09.2008 passed by the Judicial
Magistrate, 1st Class, Vaishali at Hazipur in complaint case no.
3485 of 2007 (Trial No. 165 of 2008) by which he has taken
cognizance under sections 417 and 120 B of the I.P.C. against the
petitioner and others.

Heard the learned counsel for the petitioner and the
learned A.P.P. for the State. Nobody has turned up on behalf of
opposite party no.2.

The case of the complainant is that he entered into an
agreement to sale certain piece of land by the petitioner. A sum of
Rs. 50,000/- was handed over to the petitioner as advance which



was handed over by the petitioner to co-accused Gayatari Devi and Chandrama Dubey Ajad. Subsequently, the complainant learnt that the description of the land was wrong and when the complainant protested all the accused persons assured him that details of the lands would be corrected subsequently at the time of final sale. Later on, the complainant heard that the said land has already been sold by co-accused to some other person. Thereafter legal notice was sent but they did not respond favourably. The co-accused had executed the sale deed of the same piece of land in favour of another person when the agreement to sale has already been drawn up in their presence between the petitioner and those co-accused.

The learned Magistrate after examining the complainant on the solemn affirmation and further after examining the two enquiry witnesses, namely, Manoj Kumar and Pramod Kumar passed the impugned order.

Submission on behalf of the petitioner is that after reading the complaint petition it reveals that absurd and malafide allegation has been leveled. On the record there is no agreement to sale. The legal notice has not been brought on the record but inspite of that the impugned order has been passed, whereby and whereunder, the petitioner and others have been summoned. There



is no chit of paper to show that the petitioner received Rs. 50,000/- from the complainant and moreover the dispute appears purely of civil nature. Vide Cr. Misc. No. 9123 of 2012 the order dated 23.09.2008 has been quashed against Gayatri Devi and Chamdrama Dubey Azad by order dated 23.11.2012 and as such against the petitioner also the cognizance order is fit to be quashed.

On the other hand, the learned A.P.P. submits that it was the petitioner who has taken advance amount of Rs. 50,000/-, but it is true that no document of agreement has been brought on the record.

Having gone through the contents of the complaint petition, the statement of the complainant on the solemn affirmation and the statements of the two enquiry witnesses, I am firmly of the view that no offence whatsoever is made out against the petitioner as well as his prosecution would be sheer abuse of process of the Court. From a plain reading of the complaint petition it reveals that the dispute as alleged appears purely of civil nature.

In view of such, this Criminal Miscellaneous is allowed and the proceeding of the complaint case and the order dated 23.09.2008 passed by the Judicial Magistrate, 1st Class,



Vaishali at Hajipur in Complaint Case No. 3485 of 2007/ Trial
No.165 of 2008 is hereby quashed.

(Jitendra Mohan Sharma, J)

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