

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22556 of 2011

Arising Out of Complaint Case No. -987 Year- 2010 Thana -null District- KATIHAR

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1. Anil Kumar Choudhary S/O Shri Rajeshwar Pd. Choudhary R/O Sirsa, P.S.-
Muffasil, Katihar, Distt-Katihar

.... Petitioner/s

Versus

1. The State Of Bihar
2. Smt. Purnima Mahto W/O Raj Kumar Choudhary R/O Mohalla-Officer Colony
(Munshi Yadav Colony), Ward No.7, P.S. & Distt-Katihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 20-04-2017

The present petition has been filed for quashing the order dated 11-10-2010 passed by Shri R. Kumar, the learned Judicial Magistrate-Ist Class, Katihar and entire proceeding of C.A. No. 987 of 2010, by which and whereunder, the learned Magistrate has found prima facie case against the petitioner for the offence under Sections- 420, 406 and 504 of the Indian Penal Code.

Heard learned counsel for the petitioner and the State.

The case of the complainant is that she entered into an agreement with Anil Kumar Choudhary for purchasing two decimals of land as mentioned in complaint petition and for the same, one agreement for sale was prepared in the registry office of Bihar. The complainant paid the entire consideration amount of Rs. 16,000/- by cash as well as by cheque of the State Bank of India. The petitioner



gave the aforesaid land in possession to the complainant after preparation of agreement for sale and promised to execute the sale deed but finally, sale deed was not executed in favour of the complainant by the petitioner. The complainant sent legal notice to the petitioner through her advocate on two times i.e. 22-12-2009 and 25-02-2010. He refused to execute the sale deed.

The court below after recording statement of complainant on S.A. and other three inquiry witnesses, found prima facie case against the petitioner for the offence under Sections-420, 406/504 of the Indian Penal Code and passed the impugned order dated 11-10-2010.

Counsel for the petitioner has submitted that it is a matter of civil dispute. There was no intention of cheating from the beginning, as agreement for sale was prepared by the petitioner with the complainant. Counsel for the petitioner referred a decision reported in **2015(3) PLJR 830 (Smt. Annu Sinha & Ors. Vs. The State of Bihar & Anr.)** and argued that no ingredient of Section-420 of Indian Penal Code is made out and there is no intention for cheating. Counsel for the petitioner also relied upon a decision of this court reported in **2016(4) PLJR 519** and argued that in spite of issuance of notice opposite party No. 2 did not appear, which shows that she is not serious in prosecution of the case. He further submitted



that an amount of Rs. 16,000/- has already been deposited in Nazarat of the lower court.

Learned APP has submitted that no interference is required in the impugned order.

In the instant case, lower court record has been called for. The complainant in her solemn affirmation has stated that the agreement was not registered. To court question, she has stated that she paid Rs. 16,000/- by cheque but she did not give the number of the cheque before the court on the plea that she does not know the number of cheque. She has further stated that agreement of sale was entered into between her and the petitioner for purchase of two decimals of land for Rs. 16,000/- and the petitioner did not execute sale deed even after sending legal notice. The other three witnesses have also given almost similar statement during inquiry.

In a judgment reported in 2015(3) PLJR page 830, this Hon'ble Court has held as follows:

“No allegation made that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission nor they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induced him to do or omit if he was not so deceived- thus, it is a case of pure and simple of breach of contract and no offence u/S 406 or 420 made out”.

Similarly, in another decision of this Hon'ble Court



reported in 2016(4) PLJR page 519, it has been observed as follows:

“Sections 420, 467, 468, 320 and 498-Challenge to the order taking cognizance –after complainant was examined on SA she left interest in the case and on number of dates she remained absent and she left doing pairvi-further, proceeding in the case will amount to abuse of the process of the court-proceeding and order taking cognizance set aside”.

In this manner, from the allegation in the complaint as well as S.A. of the complainant, statement of all the three witnesses it appears that this is a matter of purely civil dispute and civil remedy is available to the complainant for the same. It also appears that no any proof has been filed in court during inquiry about making payment of Rs. 16,000/- to the petitioner by the complainant. The petitioner has stated that he had already deposited Rs. 16,000/- in the court Nazarat. Notice was issued to opposite party No. 2 but neither opposite party No. 2 appeared nor any lawyer appeared on her behalf.

Counsel for the petitioner during course of hearing produced zerox copy of receipt showing deposit of Rs. 16,000/- in court Nazarat of Civil Court, Katihar by receipt No. 40 dated 29-04-2011.

In such circumstances, after looking into the SA and the statement of other witnesses as well as the allegation contained in the complaint, this court is of the view that continuance of criminal proceeding against the petitioner is an abuse of process of law and



harassment to the petitioner.

Accordingly, the order taking cognizance dated 11-10-2010 passed by Shri R. Kumar, the learned Judicial Magistrate-Ist Class, Katihar and along with entire proceeding of C.A. No. 987 of 2010 is, hereby quashed with respect to the petitioner.

This quashing petition is allowed.

Learned counsel for the petitioner submits that he has no objection, if, the amount of Rs. 16,000/- deposited in the court Nazarat is given to the complainant of this case.

Accordingly, the court below is directed to take necessary steps for, making payment of Rs. 16,000/- deposited by the petitioner in the court Nazarat to the complainant in accordance with law and will get receipt for the same.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	
CAV DATE	
Uploading Date	11-05-2017
Transmission Date	11-05-2017

