

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.2405 of 2014

Arising out of P.S. Case No.3602 Year 2005 Thana PATNA COMPLAINT CASE District PATNA

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1. Sadanand Rai Son of Late Chandradeo Rai Resident of Krishi Vigyan Kendra Adhaura, Kaimur, Police Station- Kaimur, District -Kaimur.
 2. Sunil Kumar Son of Late Kedar Prasad Singh Resident of Krishi Vigyan Kendra, Adhaura, Kaimur, Police Station- Kaimur, District- Kaimur.

.... Petitioners

Versus

1. The State of Bihar
2. Niranjana Singh Son of Late Babu Singh Resident of Village Salempur Dumra (Raja Bazar) Police Station- Shastri Nagar, P.O. B.V. College, District - Patna.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Prabhat Kumar Singh, Advocate
For the State	:	Mr. M. Dayal, APP
For O.P. No.2	:	Mr. Rajesh Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 18-07-2017

The petitioners challenge in this application order dated 08.11.2007, passed by Judicial Magistrate, 1st Class, Patna in Complaint Case No.3602(C) of 2005 whereby he has taken cognizance of offence under Sections 406, 420, 384, 506 and 120B of the Indian Penal Code.

2. The complainant of this case Niranjana Singh, opposite party no.2, filed a complaint alleging therein that there was an agreement with Lallan Sharma, one of the accused, Managing Director of M/s Lal & Lal Engicons Private Limited, a developer for developing his land to build an apartment. As per agreement, 68% flat would go in the share of the developer and remaining 32% to the land



owner. Allegation is that out of four flats his proper share was not given to him moreover the developer also sold his share of land to others including petitioners, so specific allegation against petitioners is that they purchased the flat from the builder.

3. Learned counsel for the petitioners submits that the petitioners were in need of flat so they purchased one flat each but the possession has been given to only one flat and the land owner has filed a title suit, so the petitioners have purchased the flats by paying consideration money, so there was no any entrustment of any property or any valuable security to them by the complainant, and also no case of cheating is made out against the petitioners rather they have been cheated. The complainant has also made the financier of the petitioners as accused who had sanctioned loan for purchasing the flat and his quashing petition was allowed by this Court by order dated 10.12.2010, passed in Cr. Misc. No.6591 of 2009.

4. Having regard to the rival submissions and on perusal of the records, it appears that there was agreement in between the complainant and accused nos.1 and 2 of the complaint Lallan Sharma and Sudarsan Ojha, Managing Director and Chairman of M/s Lal & Lal Engicon Private Limited for developing the land of the complainant by way of construction of apartment but the share of the complainant was not given by the builder, also his share of flats were



not fully completed, so only allegation against these petitioners is that Lallan Sharma, Managing Director of the Company sold his share of flats to these petitioners suppressing the dispute with the landowner; so the allegation with respect to these petitioners being only purchasers of the flats from the builder on paying consideration money does not make out any case of cheating or breach of trust or any other offence as levelled in the complaint, so continuation of criminal proceeding against them would be abuse of the process of the court, hence order dated 08.11.2007 and subsequent criminal proceeding in Complaint Case No.3602(C) of 2005 only with respect to the petitioners is set aside.

5. In the result, this petition stands allowed.

(Arun Kumar, J.

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.07.2017
Transmission Date	21.07.2017

