

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11167 of 2014

Arising Out of PS.Case No. -457 Year- 2010 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Akhilesh Kumar Son Of Late Ramavtar Prasad R/O 201, Pawanputra Apartment, P.S. Gandhi Maidan, District Patna
 2. Pratap Kumar Das Son of Late Hirendra Nath Das R/O Savitri Complex, Flat No. 101, P.S. Gardanibagh, District Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Maya Anthony @ Maya Banergee Wife Of Late George Anthony R/O St. John's Academy, Mohalla Damaria, P.O. Anisabad, P.S. Gardanibagh, District Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Harsh Singh

For the Opposite Party/s : Mr. Arun Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-07-2017

This is an application under Section 482 of the Cr. P.C. for quashing the order dated 04.03.2011 passed by Judicial Magistrate, 1st Class, Patna in Complaint Case No. 457(C) of 2010 whereunder the petitioners were summoned to face trial for the offence under Sections 418, 420, 406 and 435 of the I.P.C.

2. Heard both sides.

3. The facts in brief is that the O.P. No. 2 filed a complaint case No. 457(C) of 2010 on the file of C.J.M. against the petitioners and other co-accused. The complainant along with her two sisters entered into an agreement with petitioner no. 1, who happens to be



Director of Habitat Engicon Pvt. Ltd. indulged in development work. As per agreement, the petitioner no. 1 agreed to develop and construct three storey building excluding ground floor as per the terms sanctioned by Patna Regional Authority. In the said Building, the owners had to occupy 35 per cent and the Builder to the extent of 65 per cent. It was also agreed that the petitioner no. 1 had to complete the construction within 18 months. The developer was given grace period of six months, but not beyond three years from the date of sanction of building plan by the competent authority. It was also agreed that the developer would pay 50,000/- to each three sharers and further Rs. 9000/- as rent in advance before dismantling the house standing over the land. The petitioner no. 1 did not take any interest in development work and expressed his inability to complete the project due to paucity of fund. The complainant requested several times for the advance payment of Rs. 50,000/-, but he refused and asked the complainant to contact another builder. The petitioner on 16.12.2009 started demolishing her house with the help of some persons and on being asked, the petitioner said that he was authorized to demolish the house by other co-sharer. The complainant approached local police station but to no effect and thereafter she filed the complaint case. The court below after enquiry under Section 202 Cr.P.C. found prima facie case and summoned the



petitioners to face the trial for the offence under Sections 418, 420, 406 and 435 of the I.P.C.

4. Heard Mr. Harsh Singh, the learned counsel for the petitioners and Mr. Arun Kumar, A.P.P. for the State.

5. It has been submitted that the petitioner no. 1 is the Managing Director of M/s Habitat Engicon Pvt. Ltd., who entered into an agreement with the O.P. No. 2 and her sisters for construction of building after demolition of old structure. In this regard, an agreement was executed on 10.04.2005. The petitioner No. 2 is the husband of one of the sisters of O.P. No. 2. As per the agreement, the construction was to be completed between 18 months to three years from the sanction of the building plan by the competent authority. The petitioner no. 1 could not complete the construction work as the competent authority sanctioned the plan on 05.05.2009. On account of delay in sanction, the price of property escalated and so, the O.P. No. 2 with dishonest intention has filed the complaint case. The other two co-owners, who are sisters of O.P. No. 2 have not come with any grievance. The petitioner no. 1 after completing development work has handed over the possession of flats to other co-sharers in the year of 2012. The court below without considering the material on record has summoned the petitioners without apply judicial mind and so, the order is fit to be



quashed.

6. The learned APP, on the other hand, submitted that the petitioners have violated the terms and conditions of the agreement and also did not pay the amount as agreed. The petitioners demolished the building in violation of terms and conditions and thereby, they have rightly been summoned to the face the trial.

7. On perusal of enclosures, I find that the photo copy of the agreement allegedly entered into by the parties has been annexed as Annexure-3 of the petition. The said document is un-registered and it does not give the date on which it was executed and signed by the parties. There is no such clause in the agreement to show that what will happen if the plan with respect to construction / development is not sanctioned by the competent authority. The petitioner no. 1 has not paid the agreed amount to the O.P. No. 2 before taking step for demolition of building. He demolished the building without any information to the O.P. No. 2. The complainant on her S.A. and other witnesses, at the time of enquiry, have supported the allegation of violation of terms and conditions of the agreement. They have stated that the petitioner no. 1 in absence of O.P. No. 2 without her knowledge demolished the old building existing on the spot. The Magistrate finding prima facie case against the petitioners has rightly summoned the petitioners and other co-



accused for the offence under Section 418, 420, 406 and 435 of the I.P.C. The petitioners will have opportunity to raise their defence at the time of trial.

8. In view of discussions made above, I find that the impugned order suffers no illegality requiring any interference. This criminal miscellaneous application is devoid of merit and accordingly, is dismissed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.07.2017
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