

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1417 of 2014

Arising Out of PS.Case No. -270 Year- 2013 Thana -AGAMKUAN District- PATNA

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Raj Kishore Prasad, Son of Late Chandrika Prasad, Resident of Village - Khaira Toli, P.O. Mitanchak, P.S. Parsa Bazar, District – Patna.

.... Petitioner.

Versus

1. The State of Bihar.
2. Smt. Pragya Devi, Wife of Sri Amar Nath Singh, Resident of Bhooth Nath Road, House No.4H/59, Bahadurpur Housing Colony, P.S. Agamkuan, District - Patna

.... Opposite Parties.

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Appearance :

For the Petitioner : Mr. Satish Kumar Sinha, Advocate.
For the State : Mr. Murlidhar, A.P.P.
For the Opposite Party No.2 : M/s. Dhananjay Kumar and Gyandendra Kumar Singh, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 01-08-2017

Heard learned counsel for the petitioner, learned A.P.P. for the State and the learned counsel for the opposite party no.2.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 03.10.2013 passed in Agam Kuan P.S. Case No.270 of 2013 by the court of the Judicial Magistrate, Patna City, Patna, taking cognizance of the offence under Sections 420 and 406 of the Indian Penal Code against the accused-petitioner.

3. The facts, leading to this application, is that the opposite party no.2 Smt. Pragya Devi gave his written report to the Officer



Incharge, Agam Kuan Police Station, Patna, to the effect that he talked to the petitioner Raj Kishore Prasad to purchase 3600 square feet land, situated at Bahadurpur Housing Colony, Patna, and, accordingly, Rs.39,99,000/- was handed over to the petitioner by her as advance and agreement to sale was executed by the petitioner in her favour on 23.12.2010. The petitioner assured her to execute the sale deed in her favour but in spite of passing over three years, the petitioner neither executed the sale deed in respect of the aforesaid land in her favour nor he returned the money to her. As such, the petitioner grabbed her money and cheated her.

On the basis of the written report of the opposite party no.2, Agam Kuan P.S. Case No.270 of 2013 was instituted under Sections 420 and 406 of the Indian Penal Code against the accused-petitioner. After investigation, the police submitted the chargesheet against the petitioner and, thereafter, the learned Sub Divisional Judicial Magistrate, Patna City, Patna, took the cognizance of the offence under Sections 420 and 406 of the Indian Penal Code against the accused-petitioner through the impugned order.

4. Learned counsel appearing on behalf of the petitioner submits that it would appear from the F.I.R. that the allegation against the petitioner is of non executing the sale deed in respect of the aforesaid land in favour of the opposite party no.2 in spite of



executing the agreement to sale in favour of the opposite party no.2 after taking cash Rs.39,99,000/-. As such, there is breach of agreement to sale at the hands of the petitioner, which appears to be civil in nature but with an ulterior motive, the opposite party no.2 has lodged Agam Kuan P.S. Case No.270 of 2013 in which the learned Sub Divisional Judicial Magistrate, Patna City, Patna, took the cognizance of the offence under Sections 406 and 420 of the Indian Penal Code against the petitioner, which is misuse of the process of the court.

5. From perusal of the written report of the opposite party no.2, which is the basis of the F.I.R., it appears that the petitioner executed the agreement to sale in respect of 3600 square feet land, situated at Bahadurpur Housing Colony, to execute the sale deed in respect of the aforesaid land, after taking cash Rs.39,99,000/- as advance from the opposite party no.2 but he neither executed the sale deed in respect of the aforesaid land in favour of the opposite party no.2 nor he returned the money, as taken by him as advance, from the opposite party no.2. The dispute appears to be breach of agreement to sale executed by the petitioner in favour of the opposite party no.2, which is of civil in nature. As such, the impugned order taking cognizance of the offence against the petitioner under Sections 406 and 409 of the Indian Penal Code is an abuse of the process of the



court.

6. Accordingly, the impugned order dated 03.10.2013 passed in Agam Kuan P.S. Case No.270 of 2013 by the court of the Judicial Magistrate, Patna City, Patna, taking cognizance of the offence under Sections 420 and 406 of the Indian Penal Code against the accused-petitioner is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.08.2017.
Transmission Date	04.08.2017

