

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.14611 of 2014

Arising Out of PS.Case No. -318 Year- 2011 Thana -PURNIA COMPLAINT CASE District-
PURNIA

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1. Md. Manjur Alam @ Md. Manzoor Alam @ Manjoor Alam Son Of Md. Salim
2. Bibi Zaitun Nishan Wife Of Late Israfil Mian Both Resident Of Village- Naka
Chowk, Purnea City, Police Station- Sadar, District- Purnea

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mirtunjay Prasad Singh Son Of Late Chandra Mauleshwar Singh Resident Of
Cross Path Line Bazar, Police Station- K. Hat, District- Purnea

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Md. Hussain
For the Opposite Party/s : Mr. Manoj Kumar

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date: 01-08-2017

Heard learned counsel for the parties.

Petitioners, by means of this application under section 482 of the Code of Criminal Procedure, have invoked the inherent jurisdiction of this Court with prayer to quash the order dated 01.10.2012, passed by Judicial Magistrate, 1st Class, Purnea, in Complaint Case No. C-318 of 2011, whereby cognizance has been taken against the petitioners for the offence under sections 420, 406 of the Indian Penal Code.

The contention of the learned counsel for the petitioners is that no offence against the petitioners is disclosed and the present prosecution has been instituted with mala fide intention



for the purposes of harassment. It is further submitted that petitioners and complainant executed an agreement (Annexure-2) for the sale of land for an area of 4 bigha 10 katha 7 dhur for a consideration amount of Rs. 26, 75, 000/-. Petitioners were paid only Rs. 14, 37, 500/- and for which 95 decimals of land has been executed in favour of the complainant. The submission is that the dispute is purely civil in nature.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioners and no ground for quashing the entire proceedings is made out.

From perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against the petitioners. In paragraph 3 of the complainant, it has been asserted that complainant paid the entire balance amount through different cheques. The submissions made on behalf of the petitioners relate to the disputed questions of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under section 482 Cr. P.C. Only a prima facie satisfaction of the Court about the existence of sufficient ground to proceeding in the matter is required. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of **R.P. Kapur Vs.**



State of Punjab, A.I.R. 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192, Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283 and recently in *A.R.C.I. Vs. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348*. The submissions made by the learned counsel for the petitioners call for adjudication on pure questions of fact which may be adequately gone into by the trial Court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. The disputed defence of the accused cannot be considered at this stage. Moreover, the petitioners have got a right of discharge through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the trial Court. The prayer for quashing the order taking cognizance is refused.

The application accordingly stands dismissed.

(Arvind Srivastava, J)

Manish/-

AFR/NAFR	
CAV DATE	23.06.2017
Uploading Date	
Transmission Date	

