

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6797 of 2012

Arising Out of PS.Case No. -56 Year- 2011 Thana -null District- DARBHANGA

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1. Nirmal Kumar Gupta @ Nirmal Kumar S/O Lakshmi Prasad Resident Of Village- Katakari, P.S.- Bishwa Visyalaya, District- Darbhanga.
 2. Mohammad Aklakh Khan S/O Hussain Khan Resident Of Village- Katrahiya, P.S.- Sadar, District- Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mohammad Sawak Khan S/O Mohammad Lal Khan Resident Of Village- Sagarchakkar, P.S.- Bishwa Bidyalaya, District- Darbhanga.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shekhar Kr. Singh, Advocate.

For the Opposite Party/s : Mr. Ajay Kumar-I, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 30-06-2017

Heard learned counsel for the parties.

2. This quashing petition is filed against order taking cognizance dated 30.11.2011 passed by the learned Chief Judicial Magistrate, Darbhanga in connection with Town P.S.Case No. 56 of 2011 under Sections 406, 420 and 506 of the Indian Penal Code.

3. Learned counsel appearing on behalf of the petitioners submits that considering the facts alleged in the FIR, it is a case of civil nature only. Moreover, deed of agreement for sale was not produced by the informant, so there is no question of taking in advance a part of consideration money by the petitioner. Therefore, on this score, impugned order is liable to be set aside.

4. Learned A.P.P. submits that the case of the prosecution is that petitioner offered to sell his house to the informant and a deed



of agreement for sale was prepared and signed by both the sides and Rs. 5,00,000/- in advance was given to the petitioner, but later on he refused to execute the sale deed in favour of the informant so misappropriated and cheated Rs. 5,00,000/- of the informant. In this connection, he refers para-67 of the case diary, which is the statement of deed writer, who produced the photocopy of the agreement to the investigating officer and admitted the genuineness of that document and his signature as well as of both sides.

5. Having considered the submission of both sides, especially the allegation levelled in the FIR, evidence collected during investigation and the statement of the deed writer in para-67 of the case diary that he is the deed writer of the deed for agreement to sale between the parties, I find that there is sufficient material to show that a *prima facie* case under Sections 406, 420 and 506 of the India Penal Code is made out, so there is no ground for interference in the impugned order of taking cognizance. It is accordingly dismissed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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