

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41135 of 2011

Arising Out of PS.Case No. -126 Year- 2011 Thana -null District- BHABHUA (KAIMUR)

- =====
1. Kumar Sonu @ Sonu @ Punit Kumar Mishra, son of Subhash Chandra Mishra
 2. Subhash Chandra Mishra, son of late Bansh Narayan Mishra, resident of village- Mishrawalia, P.S.- Kudra, District- Kaimur (Bhabua).

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Dr. Anshuman, Advocate
Mr. Vinod Kumar Seth, Advocate.
Mr. Kuber Pathak, Advocate.
Mr. Srinivash Pandey, Advocate.
For the State : Mr. Ataur Rahman, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 03-10-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 12.08.2011 passed by the learned Chief Judicial Magistrate, Kaimur at Bhabua, in Kudra P.S. Case No. 126 of 2011, G.R. No. 987 of 2011 by which the learned Magistrate took cognizance against the petitioner for the offences under Sections 420 and 406/34 of the Indian Penal Code.

2. The prosecution case in short as per written report is that as per oral agreement between the parties, the petitioner along with other co-accused negotiated for purchase of a piece of land and petitioner No. 1 received total amount of Rs.7,40,000/- from the complainant on various dates i.e. from 26.03.2004 to 25.06.2004 as described in detail in the written report. The petitioners have assured to execute the sale deed within 15 days, but the accused persons (petitioners) neither executed sale



deed nor returned the amount.

3. Heard learned counsel for the petitioner, learned counsel for the informant and learned counsel for the State.

4. Learned counsel for the petitioners has submitted that as per written report, the money was paid to the petitioners between the period 26.3.2004 to 25.6.2004. As per written report, the cause of action arose just after 15 days of 25.6.2004, but the written report has been filed after delay of 7 years i.e. on 10.6.2011. Learned counsel for the petitioners has further submitted that even if the entire allegation is taken at face value, it is a matter of purely civil dispute and a civil remedy is available to the informant by filing suit for specific performance of contract.

5. The learned counsel for the petitioners has relied upon a decision reported in **2009 (1) PLJR-274 (Dhrub Prasad Singh Vrs. The State of Bihar and Anr)** and **2006 (3) PLJR SC 190 (Ram Biraji Devi and Another Vrs. Umesh Kumar Singh and Another.)** The Hon'ble Supreme Court has held that perusal of complaint would make it clear that there was dispute with respect to sale and purchase of land between the parties. Even if the allegations made in the complaint are accepted to be true and correct, the appellants cannot be said to have committed any offence of cheating or criminal breach of trust.

6. Learned A.P.P. and learned counsel for the informant have submitted that petitioners have committed fraud as they have not executed the sale deed in question after receiving the amount.

7. In the instant case the informant has himself stated that agreement for sale took place between the parties on 26.3.2004 and,



thereafter, the informant paid money to the petitioners on various dates till 25.06.2004, total sum of Rs.7,40,000/- as described in detail in the written report. The accused persons neither executed the sale deed nor returned the money as per agreement.

8. In this manner, from the written report itself it appears that there is dispute in respect of sale and purchase of land between the parties. The averments of the complainant in the complaint and the statement of complainant and his witnesses recorded by Magistrate during enquiry would amount to civil liability *inter se* the parties and no criminal liability can be attributed to the petitioners on the basis of material on record.

9. Therefore, even if the allegation made in the written report is taken to be correct at its face value, civil remedy is available to the informant for redressal of his grievance. Therefore, the impugned order of cognizance is not in accordance with law.

10. Accordingly, the impugned order dated 12.08.2011 passed by the learned Chief Judicial Magistrate, Kaimur at Bhabua, along with the entire Criminal Proceeding against the petitioners in Kudra P.S. Case No. 126 of 2011, G.R. No. 987 of 2011, is hereby quashed.

11. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	13/10/2017
Transmission Date	13/10/2017

