

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39458 of 2014

Arising Out of PS.Case No. -292 Year- 2012 Thana -PATRAKARNAGAR District- PATNA

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Anjani Kumar Sinha Son of Late Jwala Prasad Resident of Plot No.-B20,
Vrindawan Apartment, Phase-II, Malahi Pakari, P.S.-Patrakar Nagar,
District-Patna. Petitioner/s

Versus

1. The State of Bihar null null
2. Dr. Abhay Kumar Son of Raman Bihari Prasad Sinha, Resident of Plot
No.-D 303, Vrindawan Apartment Phase-II, Malahi Pakari, P.S.-
Patrakar Nagar, District-Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Gopal Shankar, Advocte Mr. Anirudh Kumar Sinha, Advocate
For the State	:	Mr. Umanath Mishra, APP
For Opp.Party No. 2	:	None.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

5 25-08-2017 Heard learned counsel for the petitioner and the State.

No one appeared on behalf of Opposite Party No. 2

The petitioner has filed the instant application for quashing the order taking cognizance dated 15.4.2013 whereby the learned Chief Judicial Magistrate took cognizance against the petitioner under Section 379, 341, 323, 504, 506 of the Indian Penal Code and Sections 29/30 of the Arms Act.

Counsel for the petitioner submits that the present case is purely a civil dispute and FIR has been lodged with a view to pressurize the petitioner.

From perusal of the prosecution case it appears that the dispute pertains to purchase of flat No. 501A in Vrindawan



Apartment Phase-II. The petitioner has entered into an agreement with one Dr. Ajay Kumar Agrawal for purchase of the flat and he has made certain advance in connection with consideration amount of Rs. 40,47,500/-. For execution of sale deed Title Suit No. 826/2012 has been filed for specific performance of contract which is pending in the court of Subordinate judge-I, Patna. In the aforesaid backdrop of the facts, the present case has been filed to pressurize the petitioner.

Counsel for the petitioner submits that the licensee arm was seized by the police in the present case and later on by the order of this Court the rifle of the petitioner has been released in his favour and as such no case under Section 29 of the Arms Act is made out.

Considering the nature of the controversy and the documents, it appears that the present case is precisely a civil dispute and it has been given a cloak of criminal case although the jurisdiction under Section 482 has to be exercised sparingly, the Apex Court has held out that the Court can exercise its jurisdiction under Section 482 Cr.P.C. if the materials on record suggest that the dispute is civil nature.

Considering the facts and circumstances of the case, the Court is of the view that the present dispute relates to civil



dispute and for which proceeding is pending before the competent Civil Court for specific performance of contract.

It is submitted by the counsel for the petitioner that the petitioner is in occupation of the flat and he has been paying all the revenue rents as occupant of the flat.

Considering the totality of the fact situation, the Court is of the view that the present case is an abuse of the process and it is basically a civil dispute and accordingly the order taking cognizance dated 15.4.2013 is quashed.

The application stands allowed.

(Anil Kumar Upadhyay, J)

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