

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5246 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

- =====
1. Mundrika Prasad S/O Late Munsri Prasad
 2. Shobha Devi @ Shobha Kumari, W/O Akhilesh Prasad @ Akhilesh Kumar
- Both Resident of Mohalla Jaganpura, P.S. Ram Krishna Nagar, District Patna.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Anita Yadav, W/O Sri Vijay Kumar Yadav, D/O Sri Mundrika Prasad, Resident Of Mohalla Jaganpura, P.S. R.K. Nagar, District Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Jharkhandi Upadhyay, Advocate.
For the State	:	Mr. Md. Aslam Ansari, Advocaee.
For the O.P. No. 2	:	Mr. Md. A.Rahman, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 13-09-2017

Heard learned counsel for the petitioner and learned counsel for the State as well as learned counsel for the O.P. No. 2.

2. Petitioners are accused in a complaint case lodged by daughter of the petitioner no. 1. Petitioners seek quashing of order dated 19.12.2013 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1971 of 2011 whereby petition filed under Section 245 Cr.P.C. by the petitioner has been rejected.

3. Short facts giving rise to the case is that petitioner no. 1 being the father of the complainant, entered into an oral agreement to transfer a portion of the house in her favour so she paid Rs. Nine



lacs through cheques in the name of her father in presence of the accused no. 2 as well as witnesses, thereafter he neither executed the sale deed nor returned back money even after the legal notice sent by the complainant however allegation is that accused persons came along with some unknown persons, entered into the house of the complainant and wrongfully restrained the complainant and her husband and accused no. 2 snatched golden chain from her neck.

4. Learned counsel for the petitioners submits that petitioner no. 1 is the father of the complainant and he had earlier executed a Will in favour of his daughter with respect to a portion of the house and when he filed a Title Suit No. 359 of 2011 for cancellation of Will, thereafter receiving the notice, complainant filed this frivolous complaint case.

5. Contrary to that, learned counsel appearing on behalf of O.P. No. 2 submits that there is sufficient ground for proceeding in the matter for framing of charge against both the accused persons. He submits that Rs. 9 lacs was given by the complainant by cheque in the name of the petitioner no. 1 for executing the sale deed but that sale deed was neither executed nor money was returned back. He further submits that the court below has taken cognizance of offence in the matter under Sections 323, 380, 420 and 504/34 of the Indian Penal Code and issued summons for facing trial to the accused persons.



After examining five witnesses before charge, finding the sufficient material for framing charge, the court below has rejected the petition of discharge.

6. The allegation is specific against the petitioner no. 1 of receiving Rs. 9 lacs by cheque issued by the complainant in his favour on the promise that he would execute a sale deed with respect to a portion of his house in her favour. There is no explanation submitted by the learned counsel for the petitioner that for what purpose the said amount was given to him by the complainant, so there is sufficient ground for proceeding against petitioner no. 1.

7. As far as petitioner no. 2, the daughter-in-law of the petitioner no. 1, is concerned, there is no allegation against her and the same is omnibus in nature that she entered into the house of the complainant along with others and wrongfully restrained the complainant and her husband and snatched golden chain from her neck. The nature of allegation even appears frivolous. So there is no sufficient ground for proceeding against the petitioner no. 2, hence the criminal proceeding including the impugned order dated 19.12.2013 passed by the Judicial Magistrate, 1st Class, Patna only with respect to petitioner no. 2, Shobha Devi @ Shobha Kumari, is set aside and quashed. The application filed on her behalf stands allowed.

8. So far as petitioner no. 1 is concerned, as observed



earlier, the Court finds sufficient ground for proceeding against him.

The application, on behalf of the petitioner no. 1, stands dismissed.

However, points of defence raised by the learned counsel for the petitioner no. 1 may be raised during the course of trial.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.10.2017
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