

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33923 of 2012

Arising Out of PS.Case No. -1693 Year- 2011 Thana-Bhargama District- ARRARIA

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Harinandan Yadav S/o Late Uttimlal Yadav Resident of Village- Raghunathpur
South, P.S.- Bhargma, District- Araria

.... Petitioner/s

Versus

1. The State of Bihar
2. Madan Rishi S/o Late Hiray Rishi Resident of Village- Raghunathpur North,
P.S.- Bhargama, District- Araria

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Prasad Singh

For the Opposite Party/s : Mr. Binod Kumar

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-05-2017

Heard both sides.

The petitioner seeks quashing of the order dated 07.02.2011 passed by Sri B.M. Tripathi, J.M. 1st Class, Araria in Complaint Case No. 1693C of 2010 whereunder the Magistrate finding *prima facie* case for the offence under Sections 323, 341, 379/34 of the Indian Penal Code, ordered for issuance of summons against this petitioner and other co-accuseds.

The facts in brief is that the O.P. No. 2 filed a Complaint Case on the file of C.J.M., Araria alleging *inter alia* that he entered into an agreement with this petitioner to purchase the land for a total consideration amount of Rs. 25,000/-. He paid an amount of Rs. 5,000/- as earnest money in presence of witnesses. On several



occasions, the complainant requested the petitioner to execute the sale deed and on his refusal, he demanded money in presence of witnesses on the date of occurrence. It has further been alleged that the petitioner being aggrieved, abused and assaulted the complainant and also obtained thumb impression of complainant on a blank paper under threat. The other accuseds snatched an amount of Rs. 1,000/- from his pocket.

Learned counsel for the petitioner submits that from the complaint petition itself it would appear that there is a *bona fide* land dispute between the parties. There was absolutely no agreement to execute any sale deed. The complainant has not produced any paper to show the agreement between the parties to establish the contract and payment of earnest money. The complainant has neither mentioned the date of agreement nor any date regarding payment of earnest money. The due date for executing the sale deed has also not been mentioned. The allegation of abusing, hurling threat and snatched money has been made only to make the offence grave. It was also submitted that from the allegation no offence under Section 420 of the I.P.C. is made out as the complainant has remedy to get the contract enforced by filing a Civil Suit for specific purpose of contract.

The learned APP, on the other hand, opposed the submissions.



On perusal of complaint petition, I find that the complainant has alleged that this petitioner refused to execute the sale deed in his favour on payment of balance of consideration money amounting to Rs. 20,000/-. In complaint petition, he has not mentioned the name of witnesses in presence of whom, the agreement was entered and payment was made. There is no cheat of paper to support the contract and payment of consideration amount. Besides that, the O.P. No. 2 has remedy to get the contract enforced by filing a Civil Suit. The allegation of assault and snatching money appears general and omnibus in nature.

In view of the discussions made above, I find that the prosecution of petitioner would amount to misuse the process of Court as the complainant has remedy to sue the petitioner for the implementation of the agreement. Having regard to the facts and circumstances of the case, the impugned order dated 07.02.2011 passed by Sri B.M. Tripathi, J.M. 1st Class, Araria in Complaint Case No. 1693C of 2010 is, accordingly, quashed and the application is allowed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05.05.2017
Transmission Date	05.05.2017

