

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35991 of 2014

Arising Out of PS.Case No. -1074 Year- 2012 Thana -COMPLAINT CASE District- BANKA

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1. Binod Bihari Singh @ Binod Bihari Prasad Singh @ Haris Singh S/o Late Braj Mohan Singh Resident of Village Aliganj, P.O. & P.S. Banka, District Banka.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Upendra Rana S/o Late Karu Rana Resident of Village Balarpur, P.O. & P.S. Banka, District Banka.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Basant Kumar Mishra
For the Opposite Party No. 2	:	Mr. Sanjay Kumar Jha
	:	Mr. Sanjeev Kumar @ Deepak Sahay
For the State	:	Mr. Manoj Kumar-1, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 06-10-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 17.05.2014 passed by the learned Judicial Magistrate, 1st Class, Banka in Complaint Case No. 1074 of 2012 whereby and whereunder cognizance for the offence under Sections 323, 504 and 406 of the Indian Penal Code was taken against the petitioner.

2. Heard the learned counsel for the petitioner, the learned counsel for the Opposite Party No. 2 and the learned APP for the State.

3. The Opposite Party No. 2 filed a complaint case on the



file of the learned C.J.M, Banka, alleging inter alia that he entered into an agreement with this petitioner for purchasing land measuring 6 acres 64 decimals of plot No. 76 of Khata No. 207 of village Parsa District-Banka at the rate of Rs. 1,00,000/- per bigha. The complainant as per agreement paid an amount of Rs. 5,00,000/- to the petitioner on 20.05.2010 in presence of witnesses. The complainant requested the petitioner on several occasion and lastly on 29.06.2012 to execute the sale deed in his favour on receipt of balance of consideration money whereupon the petitioner and his persons allegedly abused and pointed firearm and threatened to his life.

4. On perusal of complaint petition, I find that the allegation of abusing and hurling threat is omnibus. There is absolutely no allegation of assault against the petitioner in the complaint petition. The learned Magistrate while taking cognizance has disbelieved the allegation of Sections 419 and 420 of the Indian Penal Code and Sections 25 and 26 of the Arms Act. The learned counsel for the petitioner submits that on the date of alleged occurrence i.e. 03.05.2010, this petitioner was away from India and in support of this contention, he has filed a copy of passport No. H3070088 to show that the petitioner had left India on 10th February, 2010 and came back on 10th June, 2010. There is no paper to support payment of Rs. 5,00,000/- or any agreement to show the terms and conditions of



contract to sell the land in question. The complainant has not asserted as to by which date, this petitioner had to execute the sale deed. The dispute between the parties appears purely a civil dispute, which can be determined by a civil court and the petitioner has right to get the sale deed executed by filing a suit for specific performance of contract on establishing his case of agreement.

5. In view of discussions made above, the criminal prosecution of this petitioner appears to be an abuse of process of Court. This application is accordingly allowed and the order dated 17.05.2014 passed by the learned Judicial Magistrate, 1st Class, Banka in Complaint Case No. 1074 of 2012 is hereby quashed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2017
Transmission Date	11.10.2017

