

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41536 of 2014

Arising Out of PS.Case No. -2186 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Girdhar Gopal Verma Son of Late Brijeshwar Dayal R/o House No.-
C/62, Flat No.-10, Renuka Bhawan, New Patrakar Nagar, Hanuman Nagar,
P.S.-Patrikar Nagar, District-Patna.

2. Mintu Sharan S/o Late Ram Krishna Sharan R/o Chatrpati Shivaji Lane,
Defence Colony, Near New Kumar Nursing Home, Kankarbagh, P.S.-
Kankarbagh, District-Patna.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surya Prakash Singh, Advocate

For the Opposite Party/s : Mr. Satyendra Narayan Singh(App)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

6 15-11-2017 This petition under Section 482 of Code of Criminal
Procedure has been filed for quashing the order dated 03.07.2014
passed in Complaint Case No. 2186(C) of 2013 by Judicial
Magistrate, 1st Class, Patna, by which cognizance under Section
406/34 of Indian Penal Code has been taken against the
petitioners.

2. Briefly stated, the facts of the case is that the
complainant opposite party No. 2 filed a complaint petition being
the land owner of the plot No. C/62 at Hanuman Nagar, Patna had
got three flats in his share in the apartment named as Renuka
Bhawan and after due negotiation for sale of flat No. 102 of
complainant's share with accused petitioners Rs. 26,00000/-



(Rupees twenty six lacks) was agreed as the consideration amount of the said flat. A sum of Rs. 1 lac was paid by the petitioner No. 1 as advance by cheque dated 19.01.2012 and rest amount of Rs. 25,00000/- (Rupees twenty five lacks) was to be paid at the time of final execution of registry of the Flat.

3. It has been further alleged in the complaint petition that at the time of final registry on 05.07.2012 the accused petitioners fraudulently changed the consideration amount of Rs. 2200000/- (Rupees twenty two lacks) in place of Rs. 26,00000/- (Rupees twenty six lacks) and on objection petitioner No. 1 assured to pay rest of Rs. 400000/- (Rupees four lacks) but accused petitioners did not pay the remaining Rs. 400000/- (Rupees four lacks) in spite of legal notice dated 22.03.2013. Thereafter the complainant filed informatory petition dated 10.05.2013. Complainant was examined by the Court below on S.A. in support of his claim case witnesses were also examined and after enquiry the court below found prima facie case made out against the accused petitioner and took cognizance of the offence by order dated 03.07.2014.

4. It has been contended on behalf of counsel for the petitioners that a registered agreement of sale deed was executed on 24.01.2012 in which consideration amount of said flat is shown



as Rs. 22,00,000/- (Rupees twenty two lacks) mentioning the advance of Rs.1,00,000/- (Rupees one lac) being received by complainant through cheque dated 19.01.2012.

5. It has further been contended on behalf of counsel for the petitioners that complainant opposite party No. 2 never disclosed to the petitioner regarding C.W.J.C. No. 12257 of 2009 in which entire building over plot No. C/62 was in question and a vigilance case was instituted against the complainant opposite party No. 2 and there was a direction of the Court to not create any third party right and the petitioner was kept in dark about said proceeding and was given a impression that building was free from all litigation and encumbrance.

6. That subsequent to receipt of Advance of rupees 1 lac by cheque dated 19.01.2012 a registered agreement for sale (Annexure-2) was executed between the parties dated 24.01.2012 in which consideration amount of flat has been shown as rupees twenty two lacs of which Rs. 1 lac has been received by the complainant and rest amount of twenty one lacs was to be paid by petitioners at the time of execution of final sale deed and possession of flat would be handed over to petitioner thereafter.

7. The final registered sale deed (Annexure-3) was executed between the parties on 05.07.2012 in which also



consideration amount of flat has been stated as rupees Twenty Two lacs and as per recitals of final sale deed dated 05.07.2012 possession of flat was being handed over to petitioner after receiving the full consideration amount of rupees Twenty two lacs from the petitioner.

8. The terms and conditions as incorporated in the registered agreement for sale as well as final sale deed is binding between the parties and there is presumption of its correctness.

9. From reading of complaint case no case of misrepresentation fraudulent inducement or criminal breach of trust is made out against petitioners. No ingredients in order to constitute offence under Section 406 of I.P.C. is made out. Order taking cognizance dated 03.07.2014 by the court below is not sustainable either in law or in fact, as such, order taking cognizance dated 03.07.2014 under Section 406/34 of Indian Penal Code in Complaint Case No. 2186(C) of 2013 by Judicial Magistrate, 1st Class, Patna as well as whole proceeding arising out of said Complaint Case is quashed.

10. The Petition stands allowed.

(S. Kumar, J)

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