

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22852 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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1. Dr. Arun Kumar Barnwal, son of Ram Prasad Barnwal &
 2. Dr. Anita Kumari, wife of Dr. Arun Kumar Barnwal, both resident of Ishri Bazar, P.S.-Punimiaghat Bazar, District- Giridih (Jharkhand) at present, 302, Sahu Complex, Exhibition road, P.S.-Gandhi Maidan, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar &
2. Ram Baran Rai, son of late Raghunandan Rai, resident of Mohalla- Nayatola Saguna, P.S.-Danapur, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gouranga Chatterjee, Advocate
For the Opposite Party/s : Mr. APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-05-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 10.12.2008 passed by the Judicial Magistrate, 1st class, Danapur, Patna, in Complaint Case No.632-C of 2008, by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner under Section 406 Indian Penal Code.

2. Notice was issued to the Opposite Party No.2, which has validly been served through his counsel in the Court below but none has appeared.

3. Counsel for the petitioners has submitted that



mere vague allegation has been made in the Complaint Petition that he made payment of rupees one lac in cash and rupees one lac by cheque, but no supporting document has been filed by the complainant.

4. The complainant in his Solemn Affirmation also did not produce any such document even when asked by the Court about the same. The complainant in his Solemn Affirmation to a Court's question has stated that he is not aware whether money has been en-cashed or not. It has further been submitted by the counsel for the petitioners that the complainant has filed suit for specific performance of contract vide Title Suit No.97 of 2008 pending in the Court of the Sub-Judge-1, Danapur, with respect to the aforesaid dispute.

5. Learned APP has submitted that the impugned order is in accordance with law.

6. From the averments made in the Complaint Petition, it appears that the complainant has alleged that the petitioners wanted to sale five Kattha of land near Saguna More. Price of the land was fixed at rupees five lac thirty thousand per Kattha to be paid on the basis of actual measurement. Agreement of sale was entered into between the parties (complainant and the petitioners) on 08.01.2008. Petitioner No.2 was not present, so, she



did not sign the agreement. Petitioner No.1 was paid rupees one lac in cash and rupees one lac by cheque. The complainant requested the complainant to sale the land, but they avoided on one pretext or other. Thereafter, the complainant served legal notice, which was not replied.

7. Solemn Affirmation of the complainant recorded in the lower Court has been annexed as Annexure-2 to the petition. The complainant has specifically stated to a Court's question in his Solemn Affirmation that he is not aware as to whether money has been withdrawn from his account or not. Suit for specific performance of contract has also been filed by the complainant vide Title Suit No.97 of 2008 against the petitioners for the same transaction.

8. The Hon'ble Supreme Court in the case of *Murari Lal Gupta Vs. Gopi Singh* reported in (2005) 13 Supreme Court Cases 699 has clearly held that in absence of any averment in the complaint so as to infer any fraudulent or dishonest inducement having been made by the Petitioner pursuant to which the Respondent parted with his money, it cannot be said that the petitioner has cheated the respondent.

9. Similarly, our own High Court in the case of *Dr. Anzar Hassan Vs. State of Bihar* reported in 2008 (1) BBCJ 571



has held that Opposite Party filed a title suit for specific performance of contract then allegations contained in the petition of complaint is pure case of civil nature and set aside the order taking cognizance.

10. In the instant case also, as per the statement made by petitioners in para 6 of the petition, the complainant has adopted civil remedy also for the same transaction by filing Title Sit No.97 of 2008. The plaint of the aforesaid Title Suit has been annexed as Annexure-3. It is also the specific case of the complainant that agreement for sale was entered into between the parties and thereafter even assuming that he has paid the money, as claimed by him, no ingredients for the offence under Section(s) 406 Indian Penal Code is made out because as per own averment of the complainant in the Complaint Petition, he entered into agreement for sale with the petitioners.

11. Therefore, this Court finds that the impugned order suffers from illegality and continuance of the proceeding against the petitioners will be abuse of process of the Court and mere harassment to the petitioners.

12. In view of such, the order dated 10.12.2008 passed by the Judicial Magistrate, 1st class, Danapur, Patna, in Complaint Case No.632-C of 2008, by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner



under Section 406 Indian Penal Code along with entire criminal proceeding against the petitioners are hereby quashed.

13. This application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22-05-2017
Transmission Date	22-05-2017

