

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27794 of 2014

Arising Out of PS.Case No. -988 Year- 2012 Thana -BHABHU(KAIMUR) COMPLAIN C District-
BHABHUA (KAIMUR)

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Shyam Lal Sah Son of Suhavan Sah Resident of Village- Chhotka Katra, P.S-
Mohaniya, District- Kaimur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Rameshwar Singh Son of Doman Singh Resident of Village- Telanga, P.S-
Mohaniya, District- Kaimur.

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Sanjay Kumar Singh, Advocate.

For the Opposite Party No.2 : Mr. Jai Prakash Singh, Advocate.

Mrs. Arti Kumari, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 19-07-2017

Heard learned counsel for the petitioner, learned
counsel for the opposite party no.2 as well as learned APP for the
State.

2. This application under Section 482 of the Code of
Criminal Procedure has been filed for quashing the order dated
21.06.2013 passed by learned Chief Judicial Magistrate, Babhua at
Kaimur in Complaint Case No. 988 of 2012 whereby the learned
Magistrate finding prima facie case under Sections 406 and 420 of
the Indian Penal Code against the petitioner ordered to issue summon
against him.

3. It is submitted by learned counsel for the petitioner
that the dispute is of civil nature. He has denied taking of any money



by him from the opposite party no.2 and also denied the agreement dated 24.06.2012 said to have been executed by him. It is further submitted that if the opposite party no.2 has given any money or any cereal to him, he can recover it by filing civil suit and hence this criminal case is not maintainable.

4. On the other hand, learned counsel for opposite party no.2 submitted that the petitioner has deceived the opposite party no.2 by taking cereals and money and also by not executing the land in his favour in spite of executing agreement. The petitioner has denied even the execution of the agreement which indicates the *malafide* intention of the petitioner to grab the aforesaid money paid to him.

5. Heard both the parties and perused the record.

6. The complaint case was filed under Sections 406 and 420 of the Indian Penal Code by the opposite party no.2 with the allegation in succinct that the petitioner had taken cereal worth Rs. 2,68,000/- on different occasions and also taken Rs. 1,97,000/- in cash altogether Rs. 4,65,000/-, but did not execute his land in his favour despite his assurance. However, the petitioner executed an agreement dated 24.06.2012 and agreed to execute land in favour of opposite party no.2. But he neither returned his money nor executed the land in his favour.

7. From perusal of the records, it appears that in



buttress of his case, the opposite party no.2 has examined himself on solemn affirmation and also examined his three witnesses during enquiry under Section 202 of the Code of Criminal Procedure. After considering the complaint petition and materials available on record, the learned lower court has passed the impugned order.

8. The petitioner has filed a photostat copy of the said agreement vide Annexure-3 and submitted that the said agreement does not bear the signature of the petitioner and it is a forged one. But on perusal of the aforesaid document and the vakalatnama filed on behalf of the petitioner in this case, it appears that the signature of the petitioner on both the aforesaid documents matches. The aforesaid denial of signature by the petitioner itself indicates his *malafide* intention and appears to vindicate the case of the opposite party no.2.

9. In the facts and circumstances of the case, I do not find any substance in this petition. Accordingly, this quashing petition is dismissed.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	21.07.2017
Transmission Date	21.07.2017

