

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50221 of 2013

Arising Out of PS.Case No. -153 Year- 2013 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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Babalu Kumar S/O Late Siraja Singh, Resident of Village Farhangpur, P.O. Mirchai Chandi, P.S. Chandi, District Ara (Bhojpur) At Present Mangola Asthan, P.S. Laheri, Biharsharif, District Nalanda.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Samir Kumar Sinha, Advocate.

For the Opposite Party : Mr. Jharkhandi Upadhyay, APP.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 25-04-2017

Learned counsel for the petitioner is permitted to delete the name of Siraja Singh, the petitioner no. 1 who died during pendency of the case.

2. Heard learned counsel for the petitioner, learned counsel for the complainant/opposite party no. 2 and learned APP for the State.

3. The petitioner has filed this petition for quashing the order dated 18.05.2013 in Complaint Case No. 153C of 2013, whereby the learned Judicial Magistrate, First Class, Nalanda at Biharsharif, found prima facie case under Sections 406 and 34 of the Indian Penal Code to proceed against the petitioners.

4. The complainant/opposite party no. 2 narrated the



story in his complaint petition that he had talk with Siraja Singh to purchase a piece of land. Sirja Singh took the complainant to Rana Bigha to show the land. Siraja Singh assured the complainant that the land was free from all encumbrances and he would execute the sale deed after demarcation and fencing of the land. The complainant agreed to purchase 14 decimals of land at the rate of Rs. 1 lakh per decimal and gave Rs. 6 lakhs out of which Rs. 4 lakhs was paid to Siraja Singh and Rs. 2 lakh was received by the petitioner Bablu Kumar who happens to be son of Sirja Singh. The deed of agreement to sale was executed. The complainant further disclosed that on one pretext or other Siraja Singh did not execute the sale deed nor got the land measured. The complainant sent legal notice and thereafter the complaint petition was filed.

5. The complainant was examined on SA and the complainant also examined his witnesses. The learned Judicial Magistrate, Nalanda at Biharsharif, after perusing the evidence collected during the course of enquiry, found prima facie case under Sections 406 and 34 of the Indian Penal Code to proceed against the petitioners Siraja Singh and Bablu Kumar.

6. Learned counsel for the petitioner submits that from perusal of the entire complaint petition and the deed of agreement



executed by Siraja Singh in favour of the complainant/opposite party no. 2, it appears that not a single word has been whispered that the petitioner took money from the complainant in lieu of executing the deed of agreement to sale or the petitioner ever assured the complainant to execute sale deed. The petitioner has simply endorsed on the margin of the deed of agreement acknowledging the receipt of Rs. 2 lakhs but, on perusal of the deed of agreement to sale, it would appear that the deed of agreement to sale was executed in between Siraja Singh and Ajay Kumar. The petitioner Bablu Kumar is not bound by any conditions of the deed of agreement to sale. On such, no offence under Section 406 of the Indian Penal Code is made out against the petitioner and the order of the learned Judicial Magistrate, Nalanda at Biharsharif is not legal and sustainable in the eye of law.

7. In reply to the aforesaid submissions Mr. Manohar Prasad, learned counsel for the complainant/opposite party no. 2 as well as Mr. Jharkhandi Upadhyay, learned APP submitted that the petitioner is the son of Siraja Singh who entered into an agreement with the complainant/opposite party no. 2 but, Siraja Singh did not get the land measured nor he executed the sale deed even after receiving the money. It is further submitted that



petitioner being son of Siraja Singh also took part in the deed of agreement to sale and received Rs. 2 lakhs and also acknowledged such receipt on the deed of agreement to sale.

8. After considering the submissions of both sides and on perusal of the complaint petition as well as the deed of agreement to sale executed by Siraja Singh in favour of Ajay Kumar, the opposite party no. 2, it appears that Siraja Singh executed the deed of agreement to sale in favour of Ajay Kumar that sometimes after receipt of the entire amount he would execute the sale deed in favour of Ajay Kumar, the second party. The deed of agreement to sale does not attribute any part played on behalf of the petitioner. The petitioner simply endorsed and acknowledged in the margin of deed of agreement to sale that he received Rs. 2 lakhs from the second party. Even in the complaint petition, the complainant has not alleged any word to show that the petitioner also committed criminal breach of trust. Therefore, I find that no offence under Section 406 of the Indian Penal Code is made out against the petitioner and the order of the learned Judicial Magistrate, Nalanda at Biharsharif who found prima facie case under Sections 406 and 34 of the Indian Penal Code to proceed against the petitioner is bad and not sustainable.

9. Accordingly, this quashing petition is allowed. The



order dated 18.05.2013 in Complaint Case No. 153C of 2013 so far it relates to the petitioner is quashed.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.05.2017
Transmission Date	11.05.2017

