

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44105 of 2014

Arising Out of PS.Case No. -2214 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Manish Kumar @ Manish Kumar Singh Son of Akhilesh Sharan Singh, Resident of
Bhup Narayan Singh Colony, P.S.- Madhubani, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Nand Kumar Mandal Son of Ram Prit Mandal, Resident of S-7, Imarat Kohinoor,
Chitkorha, P.O.- Anishabad, P.S.- Gardanibagh, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : M/s Jagjit Roshan, Rajeev Roshan and Apul, Advs.
For the Opposite Party/s : Mr. Indra Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-09-2017

1. Heard the parties and perused the record.
2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 09.10.2012 passed by Judicial Magistrate 1st Class, Patna in Complaint Case No. 2214(c)/2012 whereby and whereunder the learned Magistrate finding *prima facie* case for the offences under sections 406, 420, 422, 468 of the Indian Penal Code and section 138 of the Negotiable Instrument Act, ordered to issue summons against this petitioner.
3. It has been submitted that this petitioner had entered into an agreement with the opposite party no. 2 for transferring the



land of plot nos. 2215, 2216, and 2220. In this regard, an agreement was executed and the opposite party no. 2 had given an amount of Rs.2,31,000/- to the petitioner. The document in question could not be executed in favour of the opposite party no. 2 and so, the petitioner returned the said amount to the opposite party no. 2 through cheque. As per Bank Account, the said cheque could not be encashed on account of insufficient fund in the Account and so, the opposite party no. 2 had filed a complaint case against the petitioner before the learned Court below for the offence of committing breach of trust and cheating.

4. It appears that the dispute between the parties relates to sale and purchase of land on the basis of agreement entered into by them. At the time of anticipatory bail, the petitioner expressed his willingness to return the money, which was given as earnest money by the opposite party no. 2. The Sessions Judge, Patna, as per order dated 25.02.2014 passed in Bail Petition No. 4420 of 2013, directed the petitioner to return the entire amount i.e. Rs. 2,31,000/- to the opposite party no. 2 within a period of four months in five installments. The petitioner has asserted that he has already deposited the entire amount in five installments and the matter has been settled, but on account of non-cooperation of the opposite party no. 2, the case could not be disposed of. In this case, the notices were served upon the opposite



party no. 2, but in spite of service of notice, he did not appear to oppose the submission. The dispute between the parties appears to be purely a civil dispute. In the complaint petition, I do not find any ingredient of dishonest intention or the allegation of breach of trust and cheating against the petitioner. In such circumstances, the criminal prosecution of this petitioner appears to be an abuse of process of Court.

5. In a three-Judge Bench decision of the Supreme Court in ***Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh & Anr. [(1998) 5 SCC 694]***, a similar question fell for consideration and relying upon illustration (g) of section 415 IPC, it was held that the agreement for sale of land and the earnest money paid to the owner as part of consideration and possession of land and the subsequent unwillingness of the owner to complete the same, gave rise to a liability of civil nature and the criminal complaint was, therefore, not competent. In ***Dalip Kaur & Ors. Vs. Jagnar Singh & Anr. [(2009) 14 SCC 696]***, the question for determination before the Supreme Court was whether breach of contract of an agreement for sale would constitute an offence under section 406 or section 420 IPC. After examining the fact of the case and the relevant sections of the IPC, the Supreme Court held that an offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of



making of promise or representation. A pure and simple breach of contract does not constitute the offence of cheating. It further held that if the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating or criminal breach of trust.

7. In the above facts and circumstances and also for the ends of justice, the order dated 09.10.2012 passed by Judicial Magistrate 1st Class, Patna in Complaint Case No. 2214(c)/2012 and the criminal prosecution of this petitioner on the basis of said order, is hereby quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.09.2017
Transmission Date	06.09.2017

