

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42729 of 2012

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Abu Quasher @ Md. Abu Quaiser @ Abu Quaiser S/O Md. Abu Basar
Resident Of Mohalla- Pathar Ki Masjid, Mahendru, Police Station-
Sultanganj, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ishrat Azad W/O Sri Khalil Ashraf Azad, D/O Late Syed Jamaluddin
Resident Of Mohalla- B.M. Das Road, P.S.- Pirpahore And Dist.- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No.-2

For the Opposite Party/s : Mr. J.N. Thakur (App)

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

07/ 03-04-2017

Heard learned counsel for the petitioner,
learned counsel for opposite party no. 2 and Mr. J.N. Thakur,
learned counsel for the State.

The present application has been filed for
quashing the order dated 30.01.2012 passed in Complaint Case
No. 3412(C) of 2011 by learned Judicial Magistrate, Ist Class,
Patna whereby processes have been directed to be issued after
finding a prima facie case for the offences punishable under
Sections 406 and 420 of the Indian Penal Code.

The impugned order has been passed in a
complaint case filed by one Ishrat Azad before the learned Chief
Judicial Magistrate, Patna alleging therein that she is the owner of



Fakhruddin House situated at Mohalla – Langar Toli. A Development Agreement was executed on 26.04.2002 between the complainant and the accused-petitioner. The said agreement was signed by brother of the complainant, Nihalluddin Ahmad on his behalf on the basis of Power of Attorney, as the complainant was residing at the relevant time in United Kingdom and the brother of the complainant Late Nehaluddin Ahmad was managing the property of the complainant. The brother of the complainant while entering into the Development Agreement with the builder, by virtue of Power of Attorney, executed the two documents on behalf of the complainant for which he was not authorized. As per the Development Agreement 37% of the built up area was agreed to be given to the land owner and the construction work was to be completed within thirty six months with six months grace period but neither the construction was completed nor the agreed share of 37% was given to the complainant. Hence, the complaint petition.

Consequently, the complainant was examined on Solemn Affirmation and the statements of witnesses were recorded and on finding prima facie case, vide impugned order dated 30.1.2012, the learned court below directed for issuance of process after taking cognizance against the petitioner for the offences punishable under Sections 406 and 420 of the Indian



Penal Code.

It is submitted by learned counsel for the petitioner that there is share dispute between the complainant and his brother. Title Suit No. 321 of 1993 is still pending and the share of the complainant will be finally decided on the basis of passing of judgment and decree in the aforementioned title suit. For the civil nature of dispute the criminal forum has been misused and the same has been deprecated by the Apex Court.

Learned counsel for the Opposite Party No. 2 submits that the petitioner has acted in derogation of the Development Agreement and thereby he has not only committed the breach of trust but has cheated the complainant.

After hearing the rival submissions of the parties, this Court is of the view that at the stage of exercising jurisdiction under section 190(1)(a) of the Cr.P.C. the Court has only to see whether the accusation constitutes prima facie case. In this connection, useful reference may be made to the case of Sonu Gupta Vs. Deepak Gupta & Ors. 2015 (2) PLJR SC 321. Paragraph 7 of the judgment reads as follows:

“Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance



which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.”

It appears that the present quashing application was filed on 16.10.2012 but it stood dismissed for non-compliance of peremptory order dated 17.8.2015 and then it was restored vide order dated 10.2.2016 passed in Cr. Misc. No. 5627 of 2016 by a co-ordinate Bench of this Court. More over, the impugned order for issuance of process was passed on 30.1.2012 and there is nothing on record to suggest the present stage of proceeding. Hence, this Court is not inclined to interfere.

Hence, this application is disposed of with



liberty to the petitioner to raise all the contentions at the time of framing of charge, if the charge has not been framed as yet.

(Dinesh Kumar Singh, J)

DKS/-Anil/

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