

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47711 of 2017

Arising Out of PS.Case No. -27211 Year- 2014 Thana -PATNA COMPLAINT CASE District -
PATNA

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1. Surendra Kumar Dugar, son of Late J.M Dugar, residing at 52/4/1, Ballygunge Circular Road, P.S. Ballygunge, Kolkata, West Bengal, Pin- 700019.
 2. Suresnder Kumar Khetawat, son of Late P.R. Khetawat, residing at 19A, Sarat Bose Road, P.S.- Bhowanipur, Kolkatta, West Bengal- Pin- 700020.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Piyush Sinha, son of Late Vijendra Raj Kumar Singh, residing at Rukanpura, Post Office -Veterinary College, Police Station- Rupaspur, Patna- Pin- 800014.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Avanish Kumar Singh, Advocate
For the Opposite Party No.2 : Mr. Mr. Shekhar Singh, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 13-11-2017

Heard Mr. Avanish Kumar Singh, learned counsel for the petitioners and Mr. Shekhar Singh, learned counsel for the complainant opposite party no.2.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed by the petitioners for quashing the order dated 29.03.2016 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No.27211(C) of 2014 whereby after taking cognizance of the offences



punishable under Sections 467, 468, 471 and 120B of the Indian Penal Code (for short 'the IPC'), the petitioners and others have been summoned to face trial.

3. The case of the complainant, in brief, is that his father Vijendra Raj Kumar Singh and Kameshwar Rai were partners in the business of sale and purchase of land. On 18.11.1998, three persons, namely, Dr. Prasun Kumar Banarjee, Vijay Prakash and Ramesh Prasad approached his father and Dr. Prasun Kumar Banarjee offered to sell him twenty one Kathas of land and orchard under Survey Plot No.1234 (part), 1235(part), 1237(part), 1238(part), 1239(part), 1258(part) and 1861(part) of Tauzi No.5316 situated at Mohalla Sheikhpura, P.S.- Shashtri Nagar, District and Town- Patna at the rate of rupees two lacs and twenty five thousand per Katha. The offer was accepted by his father after inspection of the land and documents related to it. His father along with one Sujit Kumar Sinha and one Sunil Kumar jointly agreed to purchase the said land (seven Kathas each). Dr. Prasun Kumar Banarjee told his father that he had given power of attorney of the said land to Vijay Prakash and Ramesh Prasad authorizing them to execute the sale agreement as well as absolute sale deed. Thereafter, from 14.11.1998 to 17.12.1998, his father along with Sujit Kumar Sinha and Sunil Kumar paid rupees fifteen lacs to Vijay Prakash and Ramesh Prasad through demand drafts as advance amount and also received receipt for the same. On



19.12.1998, the agreement for sell of the said land was prepared and executed by Vijay Prakash and Ramesh Prasad as power of attorney holder and Dr. Prasun Kumar Banarjee and Kameshwar Rai put their signature as witness and his father as well as Sujit Kumar Sinha and Sunil Kumar put their respective signatures as purchasers. In the meanwhile, his father and mother died on 14.05.1999 and 20.08.2006. On 16.10.2013, he came to know that an absolute sale deed of the land in question had been executed by the accused persons. On 23.10.2013, he obtained the certified copy of the sale deed dated 24.06.2008 and found that the said absolute deed contained forged and fabricated signatures and thumb impressions of his father on the said absolute sale deed, as his father had already expired on 14.05.1999. He has alleged that the accused persons, namely, Dr. Prasun Kumar Banarjee, Sri Surendra Kumar Dugar, Sri Surendra Kumar Khetawat, Sri Aditya Dalmiya, Sri Vijay Prakash, Sri Sujit Kumar Sinha, Sri Sunil Kumar, Sri Kameshwar Rai, Sri Avinash Kumar Singh and Sri Ramesh Prasad in conspiracy with each other committed forgery with mala fide and dishonest intention to grab the property of his father by impersonating some other person as Vijendra Raj Kumar Singh and received money despite having knowledge that his father died in the year 1999.

4. After examining the complainant on solemn affirmation and one another witness under Section 202 of the CrPC, the learned



Magistrate, vide her order dated 29.03.2016, summoned the petitioners and eight others to face trial for the offences punishable under Sections 467, 468, 471 and 120B of the IPC.

5. Assailing the aforesaid order dated 29.03.2016, Mr. Avanish Kumar Singh, learned counsel for the petitioners submitted that from a bare perusal of the complaint it would be manifest that there is no allegation whatsoever against the petitioners in the entire complaint and they have been summoned in the present case only because they have been arrayed in the column of the accused as accused nos. 2 and 3 being bona fide purchasers for consideration. He submitted that the fact of the matter is that the petitioners are permanent resident of Kolkata, West Bengal. The petitioner no.1 is the Managing Director of the PS Group Realty Limited, a company incorporated under the Companies Act, 1956; whereas the petitioner no.2 is the Director of Khetawat Properties Limited, a company incorporated under the Indian Companies Act, 1956. Both the aforesaid companies are engaged in the business of real estate development. The aforesaid two companies along with Akash Ganga Homes Private Limited were interested in initiating a project at Patna. Consequent to such search, they were approached by Dr. Prasun Kumar Banerjee who represented to be the owner of the plot land situated at Bailey Road, Patna. The officers of the aforesaid three companies were made to understand that there existed an agreement



for sale between Dr. Prasun Kumar Banerjee (accused no.1), Vijay Prakash (accused no.5) and Ramesh Prasad (accused no.10), who subsequently entered into an agreement for sale with three other persons. In such circumstances, the aforesaid three companies entered into a deed of sale on 24.06.2008 wherein the aforesaid three companies were described as purchasers while Dr. Prasun Kumar Banerjee was described as vendor therein and the agreement for sale holders were confirming parties in said sale deed. He submitted that subsequently upon receipt of summons in the criminal case, the petitioners came to know the purported forgery of the signature of Vijendra Raj Kumar Singh in the aforesaid sale deed. They immediately entered into a negotiation with the heirs of late Vijendra Raj Kumar Singh and thereafter an amicable settlement was arrived at between the parties outside the court and the complainant has agreed not to prosecute the petitioners in the proceeding initiated by him. He submitted that pursuant to such amicable settlement, the complainant, who had also filed Title Suit No.5357 of 2014 filed an application under Order 23 Rule 1 of the Code of Civil Procedure Code seeking permission of the court for withdrawal of the suit against the petitioners as the complainant opposite party no.2 had no grievance or claim against them in the said suit and the application has also been allowed by the learned Magistrate, vide order dated 05.06.2017.

6. Mr. Shekhar Singh, learned counsel appearing for



opposite party no.2 has not disputed the submissions made by the learned counsel for the petitioners. He admitted that so far petitioners are concerned, after coming to know of their bona fide, the complainant has amicably settled all his disputes with them. He also admitted that the complainant, who had filed title suit against the defendants including the petitioners has withdrawn the suit as far as the defendants petitioners are concerned.

7. I have heard learned counsel for the parties and carefully perused the record.

8. Admittedly, the petitioners are purchasers of the property. There is no allegation of committing any forgery by them. The absolute sale deed of the land in question had been executed by the other accused persons in their names and, at best, it can be said that it was the petitioners, who have actually been cheated by the vendor.

9. Leaving aside the compromise arrived at by the complainant, I am of the opinion that as far as the petitioners are concerned, the ingredients of the offences alleged are not attracted against them. Their case is squarely covered by the judgment of the Supreme Court in **Mohammed Ibrahim and Others vs. State of Bihar and Another** since reported in (2009) 8 SCC 751 wherein it has been held that if a person sales a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain



that the vendor had committed the fraudulent act of cheating. But a third party, who is not the purchaser under the deed, may not be able to make such complaint. The court further held that as soon as a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration.

10. In view of the discussions made above, looking at the nature of the dispute as also the fact that the complainant has himself entered into compromise with the petitioners and has taken a stand that he does not intend to prosecute them, in the opinion of this Court, continuance of criminal proceeding against them would cause insurmountable prejudice, oppression and hardship to the petitioners. Hence, quashing of the proceeding, as far as the petitioners are concerned, would meet the ends of justice.

11. In the result, the impugned order dated 29.03.2016 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No.27211(C) of 2014, as far as summoning the petitioners to face trial along with others, is set aside.

12. The application stands allowed to the extent indicated hereinabove.

13. The trial Magistrate shall proceed with the complaint as



against the remaining accused persons.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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