

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43101 of 2014

Arising Out of PS.Case No. -1272 Year- 2012 Thana -COMPLAINT CASE District- JAMUI

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Arun Bhagat, Son of Late Krishna Bhagat, resident of Mohalla- Purani Bazar,
Police Station- Jamui, District- Jamui

.... Petitioner/s

Versus

1. The State of Bihar
2. Atul Kumar Bhagat, Son of Late Krishna Bhagat, resident of Mohalla- Purani Bazar, Police Station- Jamui, District- Jamui
3. Ram Nath Bhagat, Son of Late Jagdish Bhagat, resident of Mohalla- Purani Bazar, Police Station- Jamui, District- Jamui

.... Opposite Party/s

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Appearance :

For the Petitioner/s :

For the Opposite Party/s :

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 05-01-2018

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the O.P. No. 2.

2. Petitioner seeks quashing of the order dated
11.03.2014 passed by the Sessions Judge, Jamui in Cr. Rev. No. 54 of
2013 whereby he set aside the cognizance order dated 30.04.2013
passed by the Judicial Magistrate, 1st Class, Jamui in Complaint Case
No. 1272C of 2012 holding therein that it's a case of breach of
agreement, purely a civil dispute, so send the matter for further
inquiry and thereafter complaint was dismissed.

3. The brief fact giving rise to the case is that O.P. No. 2,
the full-brother of the complainant-petitioner, entered into an oral



agreement with the complainant-petitioner on 10.01.2009 for selling an area of 7 ½ decimals of land, on fixing consideration money of Rs. 40,000/- in total. It is alleged that Rs. 10,000/-, in advance, was paid by the complainant and also possession was handed over to him, upon which he made boundary and built *pucca* house but later on O.P. No. 2 refused to execute the sale deed, subsequently he sold the said land to another person Ram Nath Bhagat in the year 2012 and also assaulted the complainant and dispossessed from the said land.

4. Learned counsel for the petitioner submits that allegations do make out a case of breach of trust and assault, so criminal offence is made out.

5. Contrary to that, learned counsel for the State as well as O.P. No. 2 submits that it's a case of purely civil nature and the dispute arose in between the brothers. Moreover, a Title Suit No. 7 of 2013 too has been filed by the petitioner-complainant and also submits that rest amount was not paid by the complainant.

6. Having considered the rival submissions and on perusal of record, this Court takes into account that the agreement for sale was entered into the parties on 10.01.2009 but the land was sold to another person Ram Nath Bhagat in the year 2012 which is after lapse of three years and there is nothing on record to show that the complainant intended to tender the rest amount of consideration



money. So in these backdrop of fact, it is only a breach of agreement as there was no element of deception at the very initial stage inducing the complainant to make payment so *prima facie* ingredients of breach of trust are missing in this case so there is no error in the order passed by the learned Sessions Judge. Moreover, for the breach of agreement for sale, the petitioner is pursuing the matter before the Civil Court under the Specific Performance of Contract Act by filing Title Suit No. 07 of 2013.

7. This application stands dismissed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.01.2018
Transmission Date	11.01.2018

