

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42615 of 2014

Arising Out of PS.Case No. -63 Year- 2014 Thana -KHAGARIA District- KHAGARIA

=====

Prakash Jamaiyar Son of Late Jagdish Jamiyar, R/o 57 M.I.G., Kankarbagh Colony,
P.S. Kankarbagh, District Patna-20, address as disclosed M 6/48, Rajendra Nagar
near Moinul Stadium, P.S. and P.O. Rajendra Nagar, Patna-16

.... Petitioner

Versus

1. The State of Bihar
2. Naval Kishor Yadav Son of Mahvir Yadav Resident of Baluahi, P.S. Khagaria,
Dist.-Khagaria

.... Opposite Parties

=====

Appearance :

For the Petitioner	:	Mr. Dhananjay Kumar Tiwary, Advocate
For the State	:	Mr. M. Dayal, APP
For O.P. No.2	:	Mr. Surendra Kumar Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 03-01-2018

Heard learned counsel for the petitioner, learned counsel
for the State as well as learned counsel appearing on behalf of
opposite party no.2.

2. The petitioner seeks quashing of the cognizance order
dated 11.09.2014, passed by learned ACJM, Khagaria in Khagaria
P.S. Case No.63 of 2014 thereby taking cognizance of offence under
Sections 420 and 406 of the Indian Penal Code and issued summons
to stand trial in the case.

3. The brief fact giving rise to the case is that the
informant entered into an agreement for sale with the petitioner, the
land owner. The informant agreed to purchase 1 Bigha 18 Kattha and
10 Dhurs of agricultural land of the petitioner. The total consideration



amount of the land was Rs.10,50,000/- and the informant paid in advance Rs.1,00,000/- and the sale deed was to be executed by 25.11.2013 after paying the remaining consideration amount. The informant after making arrangement of the money gave information on mobile to the land owner, also sent notice to him for execution of the sale deed but the sale deed was not executed rather misappropriated Rs.1,00,000/- the advance money also.

4. Learned counsel appearing on behalf of the petitioner submits that it is purely a civil dispute, the informant has also filed a title suit for specific performance of contract. In fact the consideration money was not paid within the time frame by the informant however, admits that no notice was issued to the informant in this regard whereas the learned counsel appearing on behalf of the informant submits that the information was given to the land owner, the petitioner to execute the sale deed before 25.11.2013 within time after taking remaining amount, even legal notice was sent to the petitioner but sale deed was not executed, and the advance money of Rs.1,00,000/- was misappropriated which was given at signing agreement for sale in the year 2013 but till date the same was not returned back also. It is further submitted by learned counsel for the informant that after getting bail the accused never appeared before the trial court and the court has exhausted all process to ensure his



appearance, even the attachment proceeding under Section 83 Cr.P.C. has been issued against the accused by the court.

5. Having considered the rival submissions of the parties and on perusal of the records, the Court finds that there is allegation that despite the agreement for sale and advance money of Rs.1,00,000/- given to the petitioner at the time of entering into agreement and also ready to pay the remaining consideration amount within time for which legal notice was also sent to the informant, the sale deed was not executed. There is also no material on record to show that any notice was issued by the land owner asking the prospective purchaser to pay the remaining consideration amount and to get the sale deed executed, so it is not that the facts disclosed in the FIR do not disclose criminal offence, hence this application stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.01.2018
Transmission Date	09.01.2018

