

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43731 of 2014

Arising Out of PS. Case No.-130 Year-2010 Thana- COMPLAINT CASE District- Sheohar

Dinanath Sah Son of Late Kapildeo Sah Resident of Village- Sheohar Ward No.5, P.S. Sheohar, District- Sheohar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nand Kishore Prasad Son of Shivji Sah Resident of Village- Sheohar Ward No.6, P.S.-Sheohar, District- Sheohar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Devendra Kumar

For the Opposite Party/s : Mr. SANJAY KUMAR TIWARY 1 (APP)

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date : 20-02-2018

Heard learned counsel for the parties.

2. The petitioner seeks quashing of the cognizance order dated 10.07.2014, passed by the learned Sessions Judge, Sheohar in Criminal Revision No.28 of 2013, whereby his petition for discharge was rejected and also order dated 12.06.2013, passed by learned Judicial Magistrate, 1st Class, Sheohar in Complaint Case No.C-1/130 of 2010.

3. The brief facts giving rise to the case is that there was oral agreement between the complainant and the petitioner. The petitioner agreed to sell his land with a house situated over that piece of land on consideration amount of Rs.4,50,000/-. The said amount was paid by the complainant but sale deed was not



executed to him rather it was sold to some other person. However, the fact remains that on 06.07.2011 the entire consideration amount was returned back by the petitioner to the complainant at the time of hearing of anticipatory bail filed by him.

4. Learned counsel for the petitioner submits that it is not a case of any breach of trust rather it is a civil dispute and at best it may be a case of breach of agreement. However, the petitioner has returned back the total consideration amount to the complainant on 06.07.2011.

5. Learned counsel appearing on behalf of the complainant submits that it is a case of breach of trust moreover the complainant also incurred loss of Rs.1,45,000/- as she spent the amount in purchasing stamp paper for execution of sale deed.

6. Having considered the rival submissions and on perusal of the record, the Court finds that there was an oral agreement between the two for sale and purchase of the land but breach of agreement was made by the petitioner by not executing the sale deed in favour of the complainant even after receiving entire consideration money rather it was sold to some other person, so predominantly it is a case of breach of agreement. However, the entire consideration amount of Rs.4,50,000/- was returned back by the petitioner to opposite party no.2, so *prima facie* ingredients of



breach of trust is not made out even taking into account the entire allegation made in the complaint, so continuance of criminal proceeding in the instant matter would be abuse of the process of the court, hence, the impugned order dated 10.07.2014, passed by the learned Sessions Judge, Sheohar in Criminal Revision No.28 of 2013 and also the order dated 12.06.2013, passed by learned Judicial Magistrate, 1st Class, Sheohar in Complaint Case No.C-1/130 of 2010 are set aside as well as subsequent criminal proceeding against the petitioner.

7. The quashing application stands allowed.

8. However, it is observed that the order passed in the quashing application would not have any bearing in a case instituted in civil side.

(Arun Kumar, J)

S.KUMAR/-

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