

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38403 of 2014

Arising Out of PS.Case No. -592 Year- 2013 Thana -DARBHANGA COMPLAINT CASE District-
DARBHANGA

- =====
1. Mosmat Shrinkhala Shreya Shri @ Shrinkhala Shrey Shri Wife of Late Upendar Kumar Sinha Resident of Mohalla - Laxmi Sagar, War No. 16, L.N.M.U, District - Darbhanga, At present resident of Flat No. 103, Block - C, Gorakhdham, P.S. & District- Ranchi.
 2. Gorakh Prasad @ Gorakh Prasad Singh Son of Bindeshwari Singh
 3. Bindeshwari Singh @ Bindeshwari Prasad Singh Son of Late Chhathu Singh Both Resident of Village - Bariyarpur, Post - Gamhariya Pachrukhi, P.S. - Pachrukhi, District- Siwan, At present Resident of Village - Goshala Road, Doctors Colony, Siwan.
 4. Raghubansh Prasad Singh Son of Late Jagdish Singh Resident of Mohalla - Laxmipur Chotti, P.S. - Lahariasaray, District - Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sunita Devi Wife of Vijay Choudhary Resident of Village - laxmi Sagar Sadhugachhi, P.S. - L.N.M.U., District - Darbhanga.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Sufian, Advocate.
Mr. Thakur Brajesh Singh, Advocate.

For the Opposite Party/s : Mr. Gauri Shankar Gupta, A.P.P.
Mr. Abu Bakar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 06-03-2018

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

2. Petitioners seek quashing of the cognizance order
dated 03.07.2013 passed by the S.D.J.M., Darbhanga in complaint



case no. 592 of 2013 thereby taking cognizance of offence under Section 406,420,419 and 120B of the Indian Penal Code.

3. Learned counsel for the petitioner submits that petitioner received Rs. 6,26,000/- as advance for sale of his land in favour of complainant but rest consideration amount was not paid, therefore money was returned back by two cheques dated 04.02.2013 and the bank statement of the petitioner no. 1, Anneuxre-3, showing deduction of that amount, which was deposited from her account and this fact is stated by the petitioners in paras 8 and 9 of the application though several adjournments were granted to the O.P. no. 2 for filing counter affidavit but no counter affidavit has been filed. Further alternative submission is that there was no inducement on behalf of the petitioners to the complainant and it is not the case that land was not of the complainant and in case of any breach of agreement only a civil proceeding can be initiated and lodged the criminal case for putting pressure to execute the sale deed.

4. Learned counsel submits that the present complaint has been filed after giving cheques of Rs. 6,26,000/- to the complainant, so there is no any breach of trust as the money was already returned back and he places reliance to a case of ***Murari Lal Gupta vs. Gopi Singh*** reported in (2006) 2 SCC (Cri) 430.

5. Learned counsel appearing on behalf of the O.P. No. 2



is silent whether money was returned back or not even after giving opportunity to file counter affidavit, but the same has not been filed.

6. Having considered the rival submissions and on perusal of record, the Court finds that there was an agreement for sale for purchase of land in between the complainant and the petitioners and Rs. 6,26,000/- was paid by the complainant to the petitioner no. 1 but later on sale deed was not executed rather entire aforesaid advance money received by the petitioner/land owner was returned back by account payee cheques to the complainant. In the backdrop of the case, it is a pure and simple case of breach of agreement to sell creating civil liability between the parties for which appropriate remedy is to file a civil suit for specific performance of the agreement and not to file a criminal case.

7. Moreover, the entire averment made in the present complaint does not disclose any fraudulent or dishonest inducement made by the petitioner pursuant to which the complainant parted with the money. Moreover, it is not the case that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title of the land to the complainant. In the case of *Murari Lal Gupta* (supra), the Apex Court has decided that “merely because of an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot



be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 I.P.C. is made out even *prima facie*.”

8. The ratio decided in the *Murari Lal Gupta (supra)* case squarely fits in the present case. The complaint of the case in hand does not disclose *prima facie* offence under Section 420 or 406 of I.P.C, hence, the entire criminal proceedings inclusive of the cognizance order dated 03.07.2013 against the petitioners is hereby set aside. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.04.2018
Transmission Date	25.04.2018

