

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18525 of 2014

Arising Out of Case No. -1820 Year- 2007 Thana - COMPLAINT CASE District- KATIHAR

- =====
1. Salkhu Murmu, S/o Late Horil Murmu
 2. Arun Mandal, S/o Late Mahadev Mandal
 3. Sunil Marandi, S/o Late Sukhsen Marandi
 4. Anil Marandi, S/o Late Sukhsen Marandi
 5. Bisheshwar Mandal, S/o Late Kali Charan Mandal
 6. Sundar Mandal, S/o Ram Kishun Mandal
- Accused / Petitioner Nos. 1 and 2 are resident of village- Matiyari (Kuretha), P.S.- Mansahi, District- Katihar, Accused/Petitioner Nos. 3 and 4 are resident of village- Barbanna, P.S.- Godda, District- Godda (Jharkhand), at present residing at Kuretha Tola Matiyari, P.S.- Mansahi, District- Katihar, Accused/Petitioner Nos. 5 & 6 are Resident of Village - Kuretha, P.S. Mansahi, District - Katihar
- Petitioner/s

Versus

1. The State of Bihar
 2. Yugal Kishore Mandal, S/o Late Balram Mandal, Resident of Village - Kuretha, P.S. Mansahi, District – Katihar.
- Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. P.K.Jaipuriyar, Advocate.
Mr. Anshuman Jaipuriyar, Advocate.
Ms. Anukriti Jaipuriyar, Advocate.

For the Opposite Party/s : Mr. Mustaq Alam, APP.

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 19-03-2018

Heard learned counsel for the petitioners as well as learned counsel for the State.

2. Petitioners, by invoking inherent jurisdiction of this Court to be exercised under Section 482 Cr.P.C., seek quashing of order dated 27.01.2014 passed by the Judicial Magistrate, 1st Class, Katihar in Complaint Case No. CA1820 of 2007 thereby discharge petition filed by the petitioners has been rejected. In the present case cognizance has been taken under Sections 406, 417, 420 and 120B of



the Indian Penal Code.

3. The brief fact giving rise to the case is that Yugal Kishore Mandal, O.P. No. 2, in the present application, filed a complaint against all accused alleging therein that he entered into an agreement with Salkhu Murmu in the year 2004 for purchase of 73 decimals land and also gave him Rs. 25,251/- as advance and promised to get the sale deed executed by the land owners, Sunil Marandi and Anil Marandi, who are his brother-in-laws. The land was already mortgaged to one Kanchan Devi who received Rs. 15,000/- for giving land in possession of the complainant. Thereafter, land was sold to Arun Mandal by land owner Sunil Marandi and Anil Marandi and Salkhu Murmu refused to return back money taken in advance from the complainant.

4. Learned counsel for the petitioners contends that there is no element of cheating as no inducement was made by Salkhu Murmu, petitioner no. 1 to the complainant moreover, the complainant was also knowing the land owner, his brother-in-laws. Moreover, agreement for sale is not a registered one, so *prima facie* no offence is made out against the petitioners, at best it may be a civil dispute. However, in alternative argument, learned counsel for the petitioners submits that though no *prima facie* case is made out against the petitioners no. 2 to 6, it is an admitted position that there



was no agreement in between the complainant and the land owners, so land owners were not legally bound by the agreement entered in between Salkhu Murmu and the complainant. Sunil Marandi and Anil Marandi, petitioners no. 3 and 4, the owners of the land, executed sale deed in favour of one Arun Mandal and petitioner no. 5 and petitioner no. 6 are witnesses on the said sale deed so no ingredients of any offence of cheating or breach of trust is made out against these petitioners no. 2 to 6.

5. Having considered the rival submissions and on perusal of record, the Court finds that Salkhu Murmu, petitioner no. 1, as per allegation, entered into an agreement for sale with complainant with respect to land belonging to other persons namely, Sunil Marandi and Anil Marandi, his brother-in-laws. Salkhu Murmu, petitioner no. 1 has had no right and title over the land proposed to be sold to the complainant so entering in agreement and taking advance money for executing sale deed is the consequence of inducement given by Salkhu Murmu to the complainant. The word inducement has been defined in the Oxford Advanced Learner's Dictionary which means to persuade or influence somebody to do something. So act of Salkhu Murmu, petitioner no. 1, persuading the complainant to enter into agreement for purchase of land having no right and title and also receiving advance money constitute *prima facie* offence under



Sections 406 and 420 I.P.C. but no *prima facie* offence under Section 417 of Indian Penal Code is made out as there is no case of misrepresentation.

6. As far as rest other petitioners are concerned, they are not party to the agreement. The land owners, petitioners no. 3 and 4 never entered into agreement for sale with the complainant and the said land was purchased by the petitioner no. 2 Arun Mandal from its owner. In the said sale deed, the petitioners no. 5 and 6 are witnesses. So in the backdrop of the fact of the case, even if, the allegation as is made therein taken into entirety, no offence is disclosed against the petitioners no. 2 to 6 hence there is no sufficient material to proceed against them for framing of charge.

7. So the impugned order dated 27.01.2014 passed by the Judicial Magistrate, 1st Class, Katihar in Complaint Case No. CA1820 of 2007 against the petitioners no. 2 to 6 are hereby set aside. However, it is made clear that proceeding will continue against Salkhu Murmu, petitioner no. 1.

8. The application stands partly allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.03.2018
Transmission Date	31.03.2018

