

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39757 of 2016

Arising Out of PS.Case No. -115 Year- 2014 Thana -DAWATH District- SASARAM (ROHTAS)

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Bikrama Saw son of Late Radha Krishna Saw, resident of village- Kabee, P.S.-
Dawath, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Prem Chand @ Prem Chand Prasad son of Sri Mudrika Prasad, resident of
village- Sahpur, P.O.- Bahuara, P.S.- Dawath, District- Rohtas.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No.13, Advocate
For the State : Mrs. Dr. Indihar Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 28-03-2018

Heard learned counsel for the petitioner and learned counsel
for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for quashing of the order dated 26.04.2016 passed by the learned Judicial Magistrate, 1st Class, Bikramganj, Rohtas in connection with Dawath P.S. Case No.115 of 2014 corresponding to G.R. No.1203 of 2014 whereby the prayer made on his behalf for discharge from the criminal case has been rejected.

3. The petitioner has been made name accused in the First



Information Report (for short 'the FIR'). In sum and substance, the allegation made against the petitioner in the FIR is that he sold a piece of plot in favour of the informant and executed sale deed in this regard after obtaining consideration money, but later on, the informant came to know that the sale deed was executed in excess to the land owned and possessed by the petitioner. It is also alleged that even prior to the execution of the sale deed the mother of the petitioner had already sold part of the piece of plot in favour of some one else.

4. The allegations made in the FIR were found true in course of investigation pursuant to which the police submitted charge-sheet against the petitioner. After perusing the materials collected in course of investigation and the police report, the learned Magistrate took cognizance of the offence punishable under Section 406 of the Indian Penal Code.

5. At the stage of framing of charge, an application under Section 239 of the Cr.P.C. was filed by the petitioner seeking discharge from the case. After hearing the parties, the learned Magistrate vide impugned order dated 26.04.2016 dismissed the application filed on behalf of the petitioner.

6. Assailing the order dated 26.04.2016, learned counsel for the petitioner submitted that the allegations made in the FIR are not correct. The police also failed to take into consideration the fact that it was the petitioner who was the owner of the land for which sale deed



was executed and a perfunctory investigation was carried on resulting into submission of the charge-sheet.

7. Per contra, learned counsel for the State submitted that the allegations made in the FIR are that being fully aware of the fact regarding prior execution of the sale deed by his mother in respect of part of the land, the petitioner dishonestly induced the informant to purchase the land and after taking consideration amount fraudulently executed the sale deed for the land which was neither owned nor possessed by him. He submitted that the allegations made in the FIR were found true in course of investigation and such allegations would certainly make out a cognizable offence against the petitioner.

8. I have heard learned counsel for the parties and perused the record. I find substance in the submissions made by the learned counsel for the State. The allegations made in the FIR do attract ingredients of a cognizable offence. They were found true during investigation so far as the defence taken by the petitioner is concerned, the same can be appreciated by the trial court only at an appropriate stage during trial.

9. While passing the impugned order, the learned Magistrate has taken into consideration the defence taken by the petitioner and has come to a finding that there is sufficient ground for proceeding against the petitioner in respect of the offence punishable under Section 406 of the IPC. Having regard to the nature of



allegations, I am of the opinion that no illegality can be found with the impugned order.

10. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	31.03.2018
Transmission Date	31.03.2018

