

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38389 of 2011

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1. Aman Choudhary, Son of Sri Nagendra Choudhary, Resident of Village Chahunta (Anandpur), P.O. Ahiyara, P.S. Bisfi, District Madhubani, At present Bank Colony, Laxmi Sagar, P.S. Lalbagh, District Darbhanga.
 2. Manju Choudhary, Wife of Sri Nagendra Choudhary, Resident of Village Chahunta (Anandpur), P.O. Ahiyara, P.S. Bisfi, District Madhubani, At present Bank Colony, Laxmi Sagar, P.S. Lalbagh, District Darbhanga.

... .. Petitioners

Versus

1. The State of Bihar
2. Satyendra Sharma, Son of late Deo Bilash Sharma, Resident of A/404, Sangita Apartment, Khajpura, P.S. Rajiv Nagar, District Patna.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Pravin Kumar, Advocate Mr. Shashank Shekhar, Advocate
For the State	:	Md. Mushtaque Alam, APP
For O.P. No.2	:	Ms. Satbhama Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 16-08-2018

The petitioners seek quashing of the impugned order dated 16.08.2011 passed by learned Judicial Magistrate, First Class, Patna in Complaint Case. No. 923 (c) of 2011 thereby taking cognizance of the offence under Sections 406 and 420/34 of the IPC.

2. The fact of the complaint in brief compass is that the petitioner no. 1, Aman Chaudhary approached the complainant, a boundary raiyat, for selling a piece of land purchased by his mother from a cooperative society situated adjacent plot to the



complainant and total consideration money was fixed Rs. 8,25,000/- and on 10.11.2008 an agreement for sale was also executed by Aman Chaudhary, petitioner no.1 on behalf of his parents and Rs. 8,25,000/- consideration money was paid at different dates to the petitioner no.1 and some part money by Bank Draft which was credited into the account of the Mother of petitioner no. 1, but neither the sale deed was executed nor the money was returned back.

3. Learned counsel for the petitioners submits that as per the agreement only part payment was made, but entire consideration money was not paid within time so the sale deed was not executed. Moreover, the petitioner no. 1 never kept the complainant in dark that he is the owner of the land having the right and title rather it was disclosed that the land was purchased by his mother from the cooperative society. Moreover pursuant to the agreement NOC was also obtained by the petitioner for selling the land in favour of the complainant but as total consideration money was not paid so the sale deed was not executed. In either view of the matter neither it is a case of breach of trust or cheating rather the dispute is of civil nature. It is submitted that in the agreement one of the conditions Draft of Rs. 5,25,000/- was to be paid latest by 27.11.2008 so time being essence of the agreement



such condition was not fulfilled, so after lapse of time the sale deed was not executed and alternative argument is as far as petitioner no.2 is concerned she is made accused only being the mother of the petitioner no.1 and the land in her name but neither she has entered into the agreement nor received any money; whereas learned counsel appearing on behalf of O.P.No. 2 submits that the complainant has been cheated by the accused persons and total consideration money was paid even thereafter, sale deed was not executed, not only that the consideration money was also not returned back so there was intention right from the beginning to cheat the complainant.

4. Having considered rival contentions and on perusal of record, the Court finds that the accusation made in the complaint is specific only against the petitioner no. 1 Aman Chaudhary, the person who has entered into the agreement for sale with the complainant though it is an unregistered document. Manju Chaudhary, the mother of the petitioner no. 1, is not the signatory in any capacity on the deed of agreement for sale. There is also no direct averment that money was handed over to her.

5. Having consideration of these facts, the Court finds no prima facie case of either breach of trust or cheating against Manju Choudhary, petitioner no.2 is made out even taking into



account the entire allegation levelled in the complaint especially against her, so the impugned order with respect to Manju Chaudhary petitioner no.2 and subsequent criminal proceeding against her is hereby quashed. However, as earlier observed prima facie case being made out against Aman Chaudhary, petitioner no.1 the criminal proceeding will proceed further against him in accordance with law.

6. Accordingly, the application stands disposed of.

(Arun Kumar, J)

S.KUMAR/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	20.08.2018
Transmission Date	20.08.2018

