

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18076 of 2011

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Gopal Prasad Sah S/O Late Lelhu Sah Resident Of Mohalla- Binodpur, P.S.-
Katihar Town, District- Katihar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ganesh Sharma S/O Bindeshwari Sharma Resident Of Village- Mirchi Bari,
P.S.- Sahayak, District- Katihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma with Mr. L. K. Sharma and Mr. Prem Sankar Kumar, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 29-11-2018

Heard Mr. Ramakant Sharma, learned senior counsel, along with Mr. L. K. Sharma and Mr. Prem Shankar Kumar, learned counsel for the petitioner and learned A.P.P. for the State.

2. Despite valid service of notice on opposite party no. 2, none is present to represent him.

3. The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

“ That this is an application for quashing



the order dated 03.11.2010 passed by learned S.D.J.M., Katihar in C.A. No. 3344/2009/Trial No. 2684/2010, whereby and whereunder he took cognizance for the offence under section 420 of the Penal Code by filing a prima facie case against accused petitioner.”

4. As per the complaint, the petitioner is alleged to have taken rupees nine lakhs and to have entered into an agreement for sale of piece of land of 43 decimals to the opposite party no. 2 and the remaining rupees three lakhs amount was to be paid at the time of registration of the sale deed. It is alleged that the opposite party no. 2 had even put fencing on the land in question but the petitioner did not execute the sale deed.

5. Learned counsel for the petitioner submitted that the matter is purely a civil dispute as it is with regard to enforcement of a so called agreement for which the opposite party no. 2 has a remedy under the common civil law by filing suit for Specific Performance. Learned counsel further submitted that having realised the folly, opposite party no. 2 has also filed Title Suit No. 82 of 2010 before the Sub-Judge-1, Katihar for Specific Performance against the petitioner and others, which is pending. Learned counsel submitted that from



the entire complaint, no criminality is borne out and, thus, cognizance under Section 402 of the Indian Penal Code is totally unsustainable and in fact abuse of the process of the Court.

6. Learned A.P.P. submitted that in the present case, cognizance has been taken after recording the evidence of the complainant and witnesses. However, he was not in a position to controvert the fact that from the entire complaint case, purely a civil dispute is made out.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case has been made out for interference. The bare perusal of the entire complaint discloses that it is a case where the opposite party no. 2 is aggrieved by certain alleged non-performance of the terms of the agreement for sale of land. For the same, in the considered opinion of the Court, initiation of criminal proceeding is an abuse of the process of the Court. Further, as the opposite party no. 2 has now filed a suit for Specific Performance, law will take its course.

8. For the reasons aforesaid, the application succeeds. The cognizance taken against the petitioner under Section 420 of the Indian Penal Code dated 03.11.2010 by the



S.D.J.M., Katihar in C.A. No. 3344 of 2009/Trial No. 2684 of
2010 stands quashed.

(Ahsanuddin Amanullah, J)

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