

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17448 of 2014

Arising Out of PS.Case No. -1617 Year- 2007 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

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1. Sita Devi, Wife of Late Lal Mini Lal @ Lal Muni Jauhri
2. Lal Ratan Lal Jauhari @ Lal Ratan Lal
3. Lal Suraj Lal Jauhari @ Lal Suraj Lal
Both are sons of Late Lal Mani Lal @ Lal Muni Jauhari All are residents of
Mohalla- Nauratna Bazar, Post & P.S.- Sasaram Town, District- Rohtas

.... Petitioner/s

Versus

1. The State of Bihar
2. Bhola Prasad Sarraf, Son of Late Murlidhar Sarraf, Resident of Mohalla-
Gurudwara Road (Taksal Sangat), Post & P.S.- Sasaram Town, District- Rohtas

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate.
For the opposite party No.2: Mr. Bajrang Lal, Advocate.
For the State : Ms. Anita Kumari, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-03-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 05.06.2010 passed by learned Judicial Magistrate, 1st Class, Sasaram, in Complaint Case No. 1617 of 2007 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners and other accused person for the offences under Sections 147, 323 and 380 of the Indian Penal Code.

2. Heard learned counsel for the petitioner, learned counsel for the opposite party No. 2 and learned counsel for the State.

3. Learned counsel for the petitioner has submitted



that instant complaint has been filed by the complainant just to give pressure to execute sale deed as per agreement dated 18.03.1987 with respect to house as mentioned in Schedule 'K' of the complaint petition. It has further been submitted that for enforcement of aforesaid agreement, the complainant has also filed Title Suit for specific performance of contract.

4. In the complaint petition it is alleged that complainant and accused No. 1 are friends and due to loss in business of accused No. 1, the complainant provided monetary help amounting to Rs.50,000/- to accused No. 1 between January, 1989 to November, 1989 and again Rs.50,000/- was paid for payment of loan for which registered agreement was executed by the accused No. 1 namely Sita Devi (petitioner No. 1) in favour of wife of the complainant and another deed of agreement was executed in the name of Sail Devi, sister-in-law of the complainant on 18.03.1987 with respect to house mentioned in Schedule 'K' of the complaint.

5. As per agreement, the accused persons were required to execute sale deed till 18.3.1990 after receiving the remaining amount of Rs.25,000/- for each agreement but the same has not been done by the accused persons.

6. It is mentioned in the complaint petition that still the accused persons refused to execute sale deed pursuant to the agreement between the parties. The Title Suit has been filed by the



complainant for specific performance of contract which is pending in the court below. The accused persons after knowing about filing of the aforesaid Title Suit by the complainant arrived and entered into the house of the complainant. All the accused persons assaulted the complainant and obtained his signature on blank paper and snatched golden chain worth Rs.5,013/-.

7. Learned counsel for the opposite party No. 2 has appeared and submitted that there is no illegality in the impugned order.

8. The court below has after enquiry, found *prima facie* case against the petitioner for the offence under Sections 147, 323 and 380 of the Indian Penal Code by the impugned order dated 5.6.2010.

9. The report was called for from the court below which has been received. From the report it appears that the case record is running for evidence before charge.

10. This Court after looking into the allegation made in the complaint petition and the impugned order finds that the instant complaint has been filed in the garb of civil dispute. It has been alleged in the complaint petition that petitioner did not execute sale deed as per agreement. The statement has been made by the complainant himself in the complaint that for enforcement of aforesaid agreement, suit for specific performance of contract has



already been filed by the complainant which is pending in the court below.

11. The court below by the impugned order in mechanical manner found prima facie case is made out against the petitioner for the offence under Section 147, 323 and 380 of the Indian Penal Code.

12. The complainant has mentioned in the complaint petition itself that for enforcement of terms of agreement, suit for specific performance of contract has already been filed by him.

13. Therefore, the impugned order passed by the court below is not in accordance with law.

14. The impugned order dated 05.06.2010 passed by the learned Judicial Magistrate, 1st Class, Sasaram, in Complaint Case No. 1617 of 2007 along with the entire Criminal Proceeding against the petitioners is hereby quashed.

15. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20/03/2018
Transmission Date	20/03/2018

