

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36151 of 2013

Arising Out of PS. Case No.-1443 Year-2008 Thana- PATNA COMPLAINT CASE District-
Patna

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1. SASHIBALA SINHA W/O JITENDRA NARAYAN SINHA R/O C/4, ROAD NO.3, WATER TOWER, R. BLOCK POLICE STATION-KOTWALI, DISTRICT-PATNA
 2. JITENDRA NARAYAN SINHA SON OF A.N.SINHA R/O C/4, ROAD NO.3, WATER TOWER, R. BLOCK POLICE STATION-KOTWALI, DISTRICT-PATNA

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Smt. Sanghmitra Singh W/O Rajiv Ranjan Singh R/O Mohalla-Purnendu Nagar, P.S. Phulwari Sariff, District-Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Jogendra Kumar
For the Opposite Party/s : Mr. B.M.P.SINHA(APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 14-03-2018 This petition filed under Section 482 of Cr.P.C. against the order dated 18.06.2013 passed in Criminal Revision No. 43 of 2013 by the Court of Sessions Judge, Patna by which discharge petition filed under Section 245 of Cr.P.C. was dismissed.

2. Briefly stated, the facts of the case is that Complainant opposite party No. 2 had entered into agreement with petitioners for sale of land and agreement was executed according to which Rs. 75,000/- per Katha, measuring 8Katha and 10 Dhurs was to be executed by the petitioners in favour of complainant. The complainant paid as advance Rs. 4.50 lacs to



petitioner and remaining consideration amount was to be paid within a specified period but subsequently petitioner denied to execute the sale deed then complainant asked them to refund the advance amount and petitioner issued a cheque for Rs. 2.50 lacs as refund for advance amount and same was presented in the bank but was dishonored. The complainant approached the petitioners either to execute the sale deed or refund the amount but they refused and thereafter present complaint case was filed. The complainant was examined on S.A. by the court below and enquiry witnesses were also examined and learned Magistrate by order dated 10.11.2008 took cognizance of the offence under Section 420 of I.P.C. and 138 of N.I. Act. Petitioners filed an application dated 10.11.2011 before the Trial Court under Section 245 of the Cr.P.C. for their discharge but same was rejected by the court below by order dated 26.09.2012 and thereafter petitioners preferred Criminal Revision No. 43 of 2013 but same was also dismissed on 18.06.2013 which are impugned in this petition.

3. Learned counsel for the petitioners submitted that no ingredients in order to constitute offence under Section 420 of I.P.C. is made out as there was no fraudulent intention at the time of entering into agreement and non-execution of sale deed



does not constitute any criminal offence and at best it could be civil liability.

4. It has been further submitted that mandatory requirements as contemplated under N.I. Act has not been followed by the complainant as such no offence under Section 138 of N.I. Act is made out as such order taking cognizance under Section 138 of N.I. Act is not sustainable.

5. After hearing the parties and going through the records of the case it appears that even in the complaint petition there was no allegation for instituting complaint case under Section 138 of N.I. Act and from the materials available on record it appears that mandatory requirement which is required in order to constitute offence under Section 138 of N.I. Act is lacking in present case, as such no offence under Section 138 of N.I. Act could have been taken against the petitioners. The court below has also taken cognizance under Section 420 of I.P.C. as it found that prima facie case under said section is made out against the petitioners. The order taking cognizance as well as rejection of discharge petition is partly set aside as far as same relates to taking cognizance under Section 138 of N.I. Act. However, no interference is made as far as order taking cognizance under Section 420 of I.P.C. is concerned and rejection of discharge



petition to that extent.

5. As a result order taking cognizance under Section 138 of N.I. Act and rejection of discharge petition to that extent is set aside. However, no interference is required in the order taking cognizance under Section 420 of I.P.C.

6. The petition is partly allowed.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

