

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.17187 of 2015

Arising out of Complaint Case No.-3397(C) Year-2012 PATNA COMPLAINT CASE
District- Patna

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Ram Mahesh Singh Son of Late Kundal Singh Resident of village and P.O.
Bishanpura, P.S. - Bihta, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Kamal Kishore, Son of Shri Kameshwar Singh Resident of Village - Kopa
Khurd, P.O. & P.S. - Naubatpur, District - Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Prasad Singh, Advocate
For the Opposite Party/s : Mr. Sanjay Kumar Tiwary (APP)

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 22-03-2018

Seeking quashment of an order dated 12.02.2013
passed by Smt. Resma Verma, Judicial Magistrate, 1st Class,
Patna in Complaint Case No. 3397(C) of 2012 taking
cognizance of the complaint and registering a complaint under
Sections 406 and 420 I.P.C. this application has been filed for
quashment of the proceedings solely on the ground that the
dispute as made out on a bare reading of the complaint and the
statement of the respondent complainant recorded under Section
200 would show that it is a civil dispute pertaining to breach of
an agreement and, therefore, a criminal complaint for offence
under Section 406 and 420 I.P.C. is not made out.

On a perusal of the complaint it is seen that an



agreement for sale was entered into between the parties on 28th of February, 2012 for sale of certain land indicated in the complaint for a consideration of Rs. 8 lacs and as an advance at the time of execution of the agreement a sum of Rs. 4,72,000/- was paid. Thereafter, it is the case of the complainant that he was willing to pay and in fact paid most of the amount and sought for registration of the sale-deed and when the same was not done even after legal notice, the complaint case was filed.

Learned counsel for the petitioner argues that if the entire complainant as indicated in Annexure-1 is taken note of, no criminal offence under Section 406 and 420 I.P.C. is made out. At best, a civil dispute pertaining to breach of agreement is made out and the act of the learned Magistrate in taking cognizance is unsustainable. Learned counsel also took me through the statement of the complainant recorded under Section 200 to say that no ingredients necessary for constituting offence under Section 406 or 420 I.P.C. is made out.

Even though learned counsel for the respondent complainant tried to make out a case that in the agreement in question dated 28.02.2012 in page 4 available with the complainant there are signature of two witnesses but in the copy of the sale agreement supplied to the petitioner along with the



legal notice the signature of the two witnesses are missing and, therefore, there is manipulation in the agreement, I find that no such complaint is made in Annexure-1 nor in the statement of the respondent complainant recorded before the Court under Section 200 on 07.01.2013 which is available at page 18 of the paper book. The entire case of the respondent complainant as is made out from the complaint Annexure-1 and his statement are that the agreement was entered into on 28.02.2012 and as inspite of payment of the consideration as per the agreement the sale-deed is not being registered, he filed the complaint case. Learned court in the order taking cognizance simply in a vague manner by holding that he has gone through the inquiry and finds the case made out, has registered the complaint without considering the fact that ingredients necessary for constituting an offence prima facie under Section 406 and 420 I.P.C. are not made out from the entire material available on record i.e. the complaint and the statement of the complainant.

Accordingly, it is a case where the matter pertains to a civil dispute between the parties and in the absence of there being ingredients necessary for constituting an offence under Section 406 and 420 I.P.C., it is a fit case where keeping in view the law laid down by the Supreme Court in the case of **Gian**



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for a civil dispute between the parties a criminal complaint is not maintainable.

Accordingly, finding the cognizance taken by the learned Magistrate to be totally illegal and not permissible under law, this application is allowed, order dated 12.02.2013 passed by Smt. Resma Verma, Judicial Magistrate, 1st Class, Patna in Complaint Case No. 3397(C) of 2012 stands quashed.

This application is accordingly allowed and disposed of.

(Rajendra Menon, CJ)

P.K.P./-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	03.04.2018
Transmission Date	03.04.2018

