

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38066 of 2018

Arising Out of PS. Case No.-26 Year-2018 Thana- SAHPUR District- Patna

Tapeshwar Thakur, Son of Late Shanichar Thakur, Resident of Village-
Bhagwanpur, P.S.- Naubatpur, District- Patna, At present Muhalla-
Balmichak, P.O. Anisabad, P.S.- Phulwarisharif, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Adv.
Mr. Surendra Kumar Mishra

For the Opposite Party/s : Mr. Arvind Prasad Singh
Mr. Amit Kumar Rakesh

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

4 04-09-2018

Heard learned counsels for the parties.

The petitioner is apprehending arrest in a case registered for the offences punishable under Sections 420, 406, 504/34 of the IPC and Section 138 of the NI Act.

The prosecution case, as per the Complaint Case No. 1171(C) of 2017 filed by Ajab Lal before the learned ACJM, Danapur on 06.11.2017, which ultimately came to be registered as police case being Shahpur P.S. Case No. 26 of 2018 on 01.02.2018 after the complaint being transferred under Section 156(3) of the Cr.P.C., is to the effect that informant entered into an agreement for purchase of Khatiyani land from Sanjeev Kumar, the son of the petitioner appertaining to Thana No. 35,



Tauzi No. 5169, Khata No. 595, Survey Plot No. 910 and gave Rupees Ten Lakhs as advance on 14.11.2014, concerning which a receiving was given by Sanjeev on a stamp paper. The petitioner being the father of Sanjeev Kumar and Sheelu Kumari the wife of Sanjeev Kumar became witnesses and assured the informant for transfer of land. On 11.01.2015 Rupees Thirteen Lakhs was also given to Sanjeev Kumar, hence altogether Rupees Twenty Three Lakhs were given for transfer of land against the rate fixed i.e., @ Rupees Twenty Four Lakhs per katha, but due to lapses on the part of Sanjeev Kumar, the sale deed could not be executed and the period of 11 months of agreement got lapsed. Subsequently, Sheelu Kumari, wife of Sanjeev Kumar issued a cheque of Rupees Eighteen Lakhs which got dishonoured, however, the petitioner issued a cheque of Rupees Five Lakhs which was en-cashed by the informant. Hence the accused persons including the petitioner in connivance of each other committed the act of cheating.

It is submitted by learned counsel for the petitioner that admittedly the petitioner is not a party to the agreement. Agreement was between Ajab Lal and Sanjeev Kumar, son of the petitioner, though the petitioner admits that he has signed the agreement as witness. Moreover, the cheque worth Rupees



Eighteen Lakhs, which got bounced, was also not issued by the petitioner, rather it was issued by the daughter in law of the petitioner Sheelu Kumari. The petitioner claims to be separate from Sanjeev Kumar, hence the offence alleged against the petitioner is absolutely not made out. Statement has been made in paragraph 3 of the petition that petitioner is not having any criminal antecedent.

The learned counsel for the informant submits that the agreement stipulates that the petitioner undertook that if Sanjeev does not execute the sale deed in favour of the informant, he will return the money or execute the sale deed in his favour. More over, the petitioner and his son Sanjeev Kumar transferred 0.5 Katha of the land in question subsequently on 01.02.2018 which suggests that the petitioner in spite of the knowledge of the agreement committed forgery along with his son.

Learned APP supported the contentions made by the learned counsel for the informant.

Having heard the learned counsel for the parties, this is not in dispute that the agreement was between the informant and Sanjeev Kumar, son of the petitioner. So far as the transfer of the land is concerned, the transfer has admittedly been made



much after lapse of the period of agreement. However the question as who is responsible for the lapse of the period of agreement, that can be decided only in an appropriate proceeding before a competent Civil Court. It is the case of the informant that he accepted Rupees Five Lakhs through account payee cheque issued by the petitioner, which will amount to a deemed rescindment of the agreement. In spite of the fact that the matter was referred to mediation, the issue could not be resolved which gets reflected from the report of the Mediator dated 06.08.2018.

In view of the discussions made above, let the petitioner above named be released on anticipatory bail in the event of arrest or surrender within 12 weeks on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned ACJM-I, Danapur in connection with Shahpur P.S. Case No. 26 of 2018 subject to the conditions laid down in Section 438(2) of the Cr.P.C.

(Dinesh Kumar Singh, J)

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