

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.4348 of 2016

Arising Out of PS. Case No.-247 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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Dilip Mahto, son of late Maheshwar Mahto, resident of village- Sikarpur, P.S.- Sonapur, District- Saran (Chapra), at present residing in Village- Bari Pahari, P.S.- Agamkuan, P.O.- Bari Pahari, (Gulzarbagh), Patna, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gajala Praveen, daughter of Quamuiddin Khan, wife of Md. Zaved, resident of mohalla- Father Ki Masjid, Dargah Road, Narai, P.S.- Sultanganj, District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr. Rajeev Ranjan Sinha, Advocate
For Opposite Party No.1 :	Mr. Ataur Rahman, APP
For Opposite Party No.2 :	Mr. Gautam Kumar Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
CAV JUDGMENT
Date : 19-12-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 31.03.2014 passed by the Sub Divisional Judicial Magistrate, Patna City, in Complaint Case No. 247 of 2014 by which the learned Magistrate after holding enquiry has found *prima facie* case against the Petitioner and another accused for the offence under Section(s) 323, 379, 406, 420, 504 Indian Penal Code.

2. Prosecution case as per the Complaint filed by one Ghazala Perveen is that accused Maheshwar Mahto and Dilip Mahto talked with the Complainant and her husband with regard to



purchase of 79 decimal land of Plot No.1652 situated in Pahari Mouza and assured them that the land, in question, have been allotted to them in partition and also showed mutation order and receipt. It is further alleged that the accused persons assured the Complainant that they will provide *Khatiyan* and papers related with partition. Both the parties agreed for sale and purchase of the land for Rs.2,20,000/- per *Kattha*. The Complainant paid consideration amount of entire piece of land amounting to Rs.55,61,600/-. Both the accused persons executed power of Attorney in the name of the Complainant on the next day and also assured to give possession of the land. It is further alleged that the Complainant and her husband requested the accused persons several times to give possession of the land, but they always delayed and neither gave any *Khatiyan* nor any papers relating to partition of land.

3. The Complainant along with her husband and witnesses went to the house of the accused persons situated in Bari Pahari, P.S.-Agamkuan, District- Patna, and told the accused persons that they have received the amount of Rs.55,61,600/-, but neither *Khatiyan* nor papers relating to land has been provided to them upon which accused persons assaulted the Complainant and told the Complainant that Title Suit is pending in respect of land.



The Papers have already been submitted in Court. It is further alleged that accused persons snatched lady's purse of black colour from the hand of Complainant containing rupees five thousand, papers, pen etc. The Complainant and her husband went to Agamkuan P.S. and stated all these facts to the Officer-in-charge of Agamkuan P.S., who advised to file complaint case in the Court.

4. Counsel for the Petitioner has submitted that there is no chit of paper with the Complainant of having paid Rs.55,61,600/- to the Petitioner. Counsel for the Petitioner has further submitted that Maheshwar Mahto executed Agreement for Sale on 19.01.2010 in favour of Mukul Kumar Singh. During the period of Agreement for Sale, Mukul Kumar Singh came along with Irshad alias Soni Mian, Javed Khan, Ayaz Alam and Mansoor Alam and requested to execute Power of Attorney in the name of some other person as per the Agreement for Sale. It is further alleged that at the time of execution of Power of Attorney, it was stated that Ghazala Perween is wife of Soni Mian @ Irshad and also gave three cheques for Rs.3,00,000/-, Rs.4,00,000/- and Rs.3,00,000/- in favour of the Petitioner issued by Md. Irshad @ Soni Mian and the same was handed over to Petitioner after six months of execution of Power of Attorney. Xerox copy of the Power of Attorney executed by the Petitioner is enclosed as



Annexure-3. Counsel for the Petitioner further submits that after execution of Power of Attorney, Ghazala Perween sold the land to different persons through registered Sale Deeds after receiving the consideration amount as mentioned in the Sale Deeds. Xerox copies of the Sale Deeds executed by Ghazala Perween is annexed as Annexure-4 series.

5. Counsel for the Petitioner further submits that four cheques of Rs.14,00,000/- in total issued by the Complainant to the Petitioner was presented before the Bank for encashment and the same was returned showing that amount is insufficient in the account. Cheques return memo were also issued. The Petitioner has enclosed Xerox copies of the cheques return memo as Annexure-5 series. The Petitioner thereafter contacted Md. Irshad alias Soni Mian, Ghazala Perween, Md. Javed and Mukul Kumar Singh with regard to bouncing of cheques upon which they assured that they will pay the amount in cash within a month and also stated that they will take the Cheques. The Petitioner enquired about various Sale Deeds executed by the Complainant Ghazala Perween and obtained certified copies of those Sale Deeds. Thereafter, Petitioner sent legal notice to Md. Irshad to make payment of the amount of cheques, which have been dishonoured due to insufficient fund, but no reply was given. Father of the



Petitioner also sent legal notice to Mukul Kumar Singh in respect of Plot No.1648 under Khata No.384 situated at Mauza Pahari, P.S.-Agamkuan, besides Plot No.1652, Khata No.298 area 79 decimal, but no reply was given. Father of the Petitioner again sent legal notice to Md. Irshad alias Soni Mian, Mukul Kumar Singh and Ghazala Perveen, which was received on 30.07.2014 by Javed. Xerox copies of the legal notice sent to the Complainant and other persons and acknowledgement with regard to receipt of the notices have been enclosed as Annexure-6, 7, 8 and 9 series to the petition.

6. Counsel for the Petitioner further submits that from perusal of Acknowledgment Due, it appears that Md. Javed received the legal notice of Ghazala Perveen on 30.07.2011. The Petitioner later came to know that Md. Javed is husband of Ghazala Perveen and not Md. Irsahd @ Soni Mian as claimed earlier.

7. Counsel for the Petitioner further submits that father of the Petitioner sent another legal notice on 11.09.2012 to Md. Irsahd @ Soni Mian, Ghazala Perveen, daughter of late Quamuddin Khan and Ghazala Perveen wife of Md. Javed, which was received, but no reply was given. The Complainant Ghazala Perveen, Md. Irshad, Md. Javed and Mukul Kumar Singh, assured



the Petitioner for making payment within a period of one month, but no payment was made. The father of the Petitioner again sent legal notice on 20.01.2013 to the purchasers, Md. Irshad @ Soni Mian, Ghazala Perween, but no reply was given. Xerox copy of the notice dated 20.01.2013 and its Acknowledgment are annexed as Annexure-10 series.

8. It is also submitted that after receiving notice purchasers came to the Petitioner to solve the problem, but the Complainant and other persons did not come. Father of the Petitioner filed Title Suit No. 250 of 2014, 251 of 2014, 252 of 2014, 253 of 2014, 254 of 2014, 255 of 2014, 256 of 2014 and 257 of 2014 against Ghazala Perveen and others for declaration of the Power of Attorney null and void and for grant of other relief(s), which is pending in the Court of the Sub Judge, 3rd, Patna. Xerox copy of the plaint is enclosed as Annexure-11 to the petition.

9. All the purchasers after purchasing land from Ghazala Perveen took possession of the concerned land and constructed boundaries. Except Rs.5,00,000/- paid to the father of the Petitioner, no amount has been paid to the Petitioner till date. The allegation levelled against the Petitioner by the Complainant is false, fabricated and concocted.



10. Instant Complaint has been filed by the Complainant to save herself from her dishonest act by which she has executed Sale Deeds (Annexure-4 series) to different persons of the aforesaid land on the basis of Power of Attorney executed by the Petitioner. It is submitted that continuance of the criminal proceeding against the Petitioner will be mere harassment to the Petitioner.

11. Having heard counsel for the parties as well as on perusal of the allegation in the Complaint, this Court finds that the Complainant has alleged that agreement for sale and purchase of land was entered into between the Complainant and this Petitioner with regard to land appertaining to Khata No.1652, 79 decimals land and the Complainant paid Rs.55,61,600/- as total consideration amount to the Petitioner on 06.06.2010 and thereafter on 07.06.2010, Power of Attorney was executed by the father of the Petitioner in favour of the Complainant. The Complainant alleged that amount of Rs.55,61,600/- was paid to the accused persons on 06.06.2010 in presence of the witnesses. The Complainant has further alleged that after making payment of the consideration amount, the Complainant always requested the Petitioner to handover *Khatian* and paper of partition of land, but they avoided the same.



12. This Court finds from Annexure-4 series that the Complainant executed several Sale Deeds in favour of different purchasers of the land appertaining to Khata No.1652 on the basis of Power of Attorney executed by the father of the Petitioner in her favour after taking consideration amount as mentioned in the Sale Deed.

13. This Court also finds from the Complaint Petition that no written document has been filed on behalf of the Complainant to support the statement that amount of Rs.55,61,600/- has been paid to the Petitioner or his father by the Complainant as final consideration amount for 79 decimals of land.

14. On the other hand, Petitioner has filed Xerox copy of the Cheques returned memo (Annexure-5 series) to show that four cheques issued by Md. Irshad @ Soni Mian, who claims to be husband of the Complainant at the time of execution of Power of Attorney, have got bounced. The Petitioner sent legal notice to the Complainant and other persons as mentioned in the Complaint Petition, which have been received by Javed and annexed as Annexure-6, 7, 8 and 9 series, but neither any payment was made by the Complainant with regard to the amount of bounced cheque nor any reply to the notice was given by the



Complainant. The Complainant later on executed various Sale Deeds, which have been annexed as Annexure-4 series, which shows that all those Sale Deeds were executed by the Complainant after taking consideration amount with regard to land appertaining to Khata No.1652.

15. Petitioner has submitted that Maheshwar Mahto has executed Power of Attorney in favour of Ghazala Perveen (Complainant) with regard to 79 decimals of land of *Khata* No.1652 on 07.06.2010 (Annexure-3). The Complainant told at the time of execution of Power of Attorney that she is wife of Md. Irshad @ Soni Mian and gave four cheques of Rs.14,00,000/-, but those cheques got bounced when presented in the Bank for encashment due to insufficient fund (Annexure-5 series). Thereafter, notices were sent by the Petitioner to the Complainant and other persons, namely, Md. Irshad @ Soni Mian and also the purchasers of the Complainant, but no reply was sent either by the Complainant or by any of those persons. Father of the Petitioner has filed Title Suit No. 250 of 2014, 251 of 2014, 252 of 2014, 253 of 2014, 254 of 2014, 255 of 2014, 256 of 2014 and 257 of 2014 against the Complainant, Ghazala Perveen, and others for declaration of the Power of Attorney null and void and for grant of



other relief(s), which is pending in the Court of the Sub Judge,3rd, Patna (Annexure-11).

16. In such circumstances, from conduct of the Complainant, it appears that after getting Power of Attorney executed by the Petitioner in her favour the Complainant has sold several plots of land appertaining to Khata No.1652 after taking consideration money. The Complainant has filed instant case just to create defence after filing of Title Suit by father of the Petitioner against the Complainant (Annexure-11 series) for declaring Power of Attorney as null and void. There is no chit of paper filed on behalf of the Complainant to show that amount of Rs.55,61,600/- was paid to the Petitioner by the Complainant.

17. The Hon'ble Supreme Court in the case of *State of Haryana and others Vs. Ch. Bhajan Lal and others* reported in *AIR 1992 SC 604*, has held that where a criminal proceeding is manifestly attended with malafide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, continuance of the criminal proceeding against the Petitioner would be abuse of process of law.



18. Therefore, this Court is of the view that continuance of the criminal proceeding against the Petitioner is mere harassment to him and abuse of process of law.

19. Accordingly, impugned order dated 31.03.2014 passed by Sub Divisional Judicial Magistrate, Patna City, in Complaint Case No. 247 of 2014 along with entire criminal proceeding against the Petitioner is hereby quashed.

20. This Criminal Miscellaneous Application is, accordingly, **allowed**.

(Sanjay Priya, J)

J. Alam/-

AFR/NAFR	AFR
CAV DATE	26-11-2018
Uploading Date	23-12-2018
Transmission Date	23-12-2018

