

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30338 of 2011

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1. Rakesh Ranjan S/o Late Sudhanshu Ranjan Resident of Mohalla-
Munshi Tola, Dumraon, P.S.- Dumraon, Distt.- Buxar
 2. Ragini Ranjan Sinha D/o Binay Kumar Sinha, Resident of
Krishna Nagar, Road No.- 22, Plot No.-154, Patna
 3. Binodini Devi D/o Late Sudhenkant Ranjan, Resident of Munshi
Tola, P.S.- Dumraon, District- Buxer, At Present Resident of
Sagurpark, Sreya Block-A, Plot No. G/1, Dhokli, P.S.- West
Mumbai, Maharastra
 4. Rashmi Ranjan Sinha D/o Asim Sinha Resident of Munshi Tola,
P.S.- Dumraon, District- Buxer, At Present Resident of
Sagurpark, Sreya Block-A, Plot No. G/1, Dhokli, P.S.- West
Mumbai, Maharastra
 5. Rupam Ranjan Sinha D/o Anjali Kumar Sinha, Resident of
101/A, Sanjay Gandhi Puram Aristofermasity Coloney, Bihind of
Lekharaj Market, Lakhnaw- 226606

... .. Petitioner/s

Versus

1. The State of Bihar
2. Atul Keshore, S/o Sri Keshore Chandra Sarkar, Resident of Munshi Tola,
Dumraon, P.S.- Dumraon, Distt.- Buxar

... .. Opposite Party/s

Appearance :

For the Petitioners	:	Mr. Sanjeet Kumar, Advocate
For the State	:	Mr. Ajay Kumar-I, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 14-08-2018

Heard learned counsel for the petitioners and the learned
APP for the State.

2. The petitioners seek quashing of the impugned order dated 09.05.2011 passed in Complaint Case No. 1377 (C) / 2007 by the learned S.D.J.M., Buxar thereby taking cognizance of the offence under sections 406, 409, 420, 467, 468 and 120B of the Indian Penal Code.



3. The brief fact giving rise to the case is that Atul Kishore the complainant took on lease a piece of land of the accused persons by giving Rs.1000/- and rent receipt was also issued but thereafter, possession of the land was not given and Rs.15000/- was also taken in advance by him for selling his land of Plot No. 4093 total area 1/3 hectare situated in village Dumraon and the total consideration money was fixed Rs. 2,62,500/- and agreement for sale was also signed by both sides but different plot number was mentioned in the agreement. The accused persons coming in conspiracy with each other Ragini Ranjan Sinha filed an application for partition of the property before the permanent Lok Adalat. Accordingly the land was partitioned between the co-sharers. On getting this information, the complainant sent two letters on various dates and asked him to execute the land but the sale deed was not executed.

4. The contention of the learned counsel for the petitioner is that prima facie no offence of either breach of trust or cheating or of making of false document is made out even if the entire accusation made in the complaint against the petitioner is taken into consideration. Only Rs.15,000/- was given by the complainant thereafter, rest consideration money was not paid in time, therefore, the accused persons denied to execute the sale



deed and also Rs.15,000/- was returned back in his account and annexure 11 copy of the pass book of the petitioner indicates that the said money was transmitted to the account of complainant. Moreover, prior to the filing of complaint a suit under the Specific Performance of Contract was filed by the complainant vide Title Suit No. 70 of 2003, that was also dismissed by the Sub-Judge-III, Buxar by order dated 19.05.2009. Only in order to put pressure to the petitioners this criminal case has been filed so no *prima facie* case is made out in order to settle the civil dispute, and the learned counsel has placed reliance in two decisions in cases of **Hridaya Ranjan Pd. Verma vs State of Bihar** reported in **2000 (3) PLJR 137 (SC)** and **Rama Devi VS State of Bihar**, reported in **2011 (1) PLJR 20 (SC)**; whereas the learned counsel for the State submits that *prima facie* case is made out against the petitioner.

5. Having consideration of the rival contentions of both the sides and on perusal of the records, the Court finds that no *prima facie* case under Sections 406, 409, 420, 467, 468 and 120B are made out against the petitioner. In **Hriday Ranjan Prasad Verma (supra)**, the Apex Court has held that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the time of beginning of the transaction. The intention at the very inception



is the gist of the offence. Moreover, there is no entrustment of any property with the petitioner so the dispute appears a civil litigation relating to breach of contract in between the parties. Even no full consideration amount was paid as per the allegation itself. Only Rs.15,000/- in advance is alleged to have been paid and that too was returned by the petitioner in his Bank Account, So, considering the every aspect of the matter as well as the legal preposition no *prima facie* case under which cognizance has been taken is made out against the petitioner, so the impugned order dated 09.05.2011 taking cognizance of the offence against the petitioner passed in Complaint Case No. 1377 (C) / 2007 by the learned S.D.J.M., Buxar as well as subsequent criminal proceeding against him is hereby quashed.

6. The petition stands allowed.

(Arun Kumar, J)

S.KUMAR/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.08.2018
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