

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24565 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SAMASTIPUR

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1. Prakash Singh, s/o late Brahmdeo Narayan Singh, resident of village- Ramapur, Maheshpur, P.S. Tajpur, District – Samastipur, at present residing at near of Chakkar Maidan, P.S.-Kazi Mohammadpur, District-Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Kamal Nayan Singh, s/o late Kaushal Kishore Singh, resident of village - Ramapur, Maheshpur, Police Station - Tajpur, District - Samastipur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Advocate

Mrs. Shally Kumari, Advocate

For the Opposite Party/s : Dr. Ravindra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 13-02-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 05.04.2011 passed by the Sub-Divisional Judicial Magistrate, Samastipur, in C.R. No.1819/2010/ Tr. No.2079 of 2011 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 406 and 420 Indian Penal Code.

2. Counsel for the petitioner has submitted that there is no chit of paper in support of the allegation in the complaint that the Complainant had paid rupees one lac to the petitioner for



execution of sale deed. Counsel for the petitioner has further submitted that civil remedy is available to the Complainant for recovery of the amount if he so desires.

3. From the order-sheet dated 11.04.2013, it appears that the Opposite Party No.2 has entered appearance by filing Vakalatnama, but today none appears on behalf of the Opposite Party No.2 during hearing of this application.

4. Allegation in the Complaint Petition is that the Complainant paid rupees one lac to the petitioner for execution of sale deed for the land as mentioned in the Complaint Petition. The Complainant insisted to execute the sale deed. The Complainant learnt that petitioner is talking to sell the land with another person, namely, Parmeshwar Rai. The Complainant went to enquire from this petitioner about the aforesaid deal then he became angry and also gave threat by pointing licensee revolver.

5. The Court below by the impugned order on the basis of two enquiry witnesses and Solemn Affirmation of the Complainant found *prima facie* case against the petitioner for the offence under Section(s) 406, 420 Indian Penal Code.

6. Learned Magistrate has mentioned in the impugned order that agreement for sale has been done on 29.03.2011 between the petitioner and one Parmeshwar Rai. The Complainant had filed



copy of the aforesaid sale agreement during enquiry before the learned Magistrate. As such, from the aforesaid document also, it does not appear that any agreement was entered into between the Complainant and this petitioner.

7. In such circumstances, this Court is of the view that the impugned order passed by the learned Court below against the petitioner is not in accordance with law.

8. Accordingly, impugned order dated 05.04.2011 passed by the Sub-Divisional Judicial Magistrate, Samastipur, in C.R. No.1819/2010/ Tr. No.2079 of 2011 along with entire criminal proceeding against the petitioner is hereby quashed.

9. The application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20-02-2018
Transmission Date	20-02-2018

