

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13709 of 2018

Arising Out of PS.Case No. -114 Year- 2016 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

- =====
1. Jai Kumar Tiwari, son of sri Kapildeo Tiwari,
 2. Sandhila @ Sandhila Tiwari, daughter of sri Jai Kumar Tiwari,
- Both resident of village- Mahaiyamaipur, P.S.- Patepur, Distt- Vaishali.
- Petitioner/s

Versus

1. The State of Bihar.
 2. Sri Vikas Kumar Singh @ Vikas Singh, son of Umesh Prasad Singh, resident of Village- Sohrathi, P.S.- Jandaha, Distt- Vaishali, A/p resident of 427/28, Dutt Nagar, Sayajipark, Ajwa Road, Post- Bapod, P.S.- Navjiwan, Distt- Vadodara (Gujarat).
- Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Verma, Advocate
For the Opposite Party No.2 : Mr. Devendra Kumar, Advocate
: Mr. Pramod Kumar Verma, Advocate
: Mr. Ranjit Kumar Thakur, Advocate
For the State : Mr. Rajeev Nayan, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-08-2018

Heard learned counsel for the petitioners and learned counsel for the complainant opposite party no.2.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioners for quashing the order dated 14.06.2017/21.11.2017 passed



by the learned Additional Chief Judicial Magistrate-XV, Vaishali at Hajipur in Complaint Case No.C114 of 2016 whereby and whereunder he has summoned the petitioners and one Mira Devi to face trial for the offence punishable under Section 420 of the Indian Penal Code.

3. Mr. Jai Prakash Verma, learned counsel appearing for the petitioners submitted that the impugned order taking cognizance of the offence punishable under Section 482 of the Cr.P.C. and summoning the petitioners to face trial for the offence punishable under Section 420 of the Indian Penal Code (for short 'I.P.C.') is bad in law. According to him, the allegations made in the complaint are patently absurd and inherently improbable. The very institution of the complaint is attended with mala fide and allowing prosecution to continue would be an abuse of process of the court. He further contended that the allegations made in the complaint do not attract ingredients of the offence punishable under Section 420 of the I.P.C. He pleaded that falsity of the case would be apparent from perusal of the averments made in the plaint of the matrimonial suit filed by the complainant in the Court of Family Judge at Vadodara under Section 9 of the Hindu Marriage Act in which the petitioner no.2 has been made the sole defendant, who being the wife of the complainant has also filed a petition under Section 24 of the Hindu Marriage Act, 1955



claiming for maintenance allowance from him in the Family Court at Vadodara.

4. Per contra, Mr. Devendra Kumar, learned counsel appearing for the complainant submitted that the allegations made in the complaint are well founded and they do attract ingredients of the offence punishable under Section 420 of the I.P.C. He contended that the accused persons by deceiving the complainant took an amount of rupees five lacs from him on the pretext of buying a piece of plot in his name, but they conspired together and got the land registered in the name of Sandhila @ Sandhila Tiwary (petitioner no.2). According to him, the application filed by the petitioners lacks merit and is fit to be dismissed. He pleaded that the averments made in the plaint of the suit filed under Section 9 of the Hindu Marriage Act cannot be made a ground for quashing the prosecution of the petitioners in the criminal complaint. He argued that the matrimonial suit and the criminal case are two separate proceedings and, thus, the averments made in the suit or the application filed by the petitioner no.2 are of no consequence so far as the present case is concerned.

5. I have heard learned counsel for the parties and carefully perused the record.

6. In the complaint, the complainant has alleged that in April, 2010 he had taken loan from the HDFC Bank for purchase of a



piece of plot at Muzaffarpur. For the said purpose, he remitted rupees two lacs ninety eight thousand in the account no.20009155059 of petitioner no.1 in the following manner:-

(i) November, 2010 – Rs.88,000/- cash deposit;

(ii) 17.10.2012 – Rs.1,80,000/- vide Cheque No.825783;

(iii) 10.11.2012 – Rs.30,000/- cash deposit.

As cost of the land was rupees five lacs ninety eight thousand, the accused persons stated that rupees three lacs has been paid to the vendor by them after taking loan and when he would pay the rest amount the land will be transferred in his name. They also stated that he will have to pay interest over the loan amount taken for the purpose of purchase of the plot.

7. He has further alleged that believing upon the words of the accused persons he started depositing rupees four thousand per month in the account of petitioner no.1 Jai Kumar Tiwary. However, Jai Kumar Tiwary came to the house of the complainant and said that delay in making payment would increase your interest burden. He advised him to repay rupees two lacs to reduce not only principal outstanding but also interest burden. Relying upon his words, he paid rupees one lac in cash and rupees one lac after taking loan from the HDFC Bank through cheque dated 25.04.2013. Thereafter, he asked for original registry papers from accused Jai Kumar Tiwary. However,



on one pretext or the other, he never handed over the registry papers to him. He has further alleged that he further paid rupees twenty four thousand to Jai Kumar Tiwary between June, 2013 and July, 2014. After July, 2014, when he stopped paying interest, the accused persons handed over him the copy of the sale deed and on perusal of the same he came to know that the plot was executed in the name of the accused Sandhila @ Sandhila Tiwari at the cost of rupees 1.76 lacs only. Thus, he alleged that though he has paid rupees five lacs twenty thousand in the name of purchase of a plot, the plot was transferred in the name of Sandhila @ Sandhila Tiwari and the cost of the plot mentioned in the sale deed was rupees one lac seventy six thousand only.

8. On the basis of the said allegations, the complainant alleged that the accused persons conspired together and cheated him to the tune of rupees three lacs seventy six thousand. He has further alleged that the accused persons also committed fraud by getting the piece of plot executed in the name of the accused Sandhila @ Sandhila Tiwari.

9. The complainant was examined on solemn affirmation under Section 200 of the Cr.P.C. Apart from the complainant in course of enquiry four witnesses, namely, Umesh Prasad, Arjun Singh, Anil Kumar Tiwari and Dilip Kumar Sharma were examined



under Section 202 of the Cr.P.C. whereafter finding a prima facie case to be made out under Section 420 of the Indian Penal Code, the petitioners and one Mira Devi were summoned to face trial. Admittedly, petitioner nos. 1 and 2 happen to be father-in-law and wife respectively of the complainant. Another accused Mira Devi, who was also summoned in the case is mother-in-law of the complainant. In course of argument, it has been brought to my notice that she has already died.

10. The witnesses examined in course of enquiry have stated that the complainant had given about rupees six lacs for purchase of piece of plot to Jai Kumar Tiwari. However, the plot was purchased in the name of accused Sandhila @Sandhila Tiwari. They have also stated that when the complainant demanded back the amount paid by him, the accused Jai Kumar Tiwari promised to return the amount but he failed to fulfill the promise.

11. It would be manifest from the statements of the witnesses recorded under Section 202 of the Cr.P.C. that they have not uttered a word regarding purchase of plot for a lesser amount or that the amount mentioned in the sale deed was rupees one lac seventy six thousand only. I also find from the statements of the witnesses examined in course of enquiry that they have admitted that after marriage the relationship between the complainant and his wife was



not cordial. I further find from the deposition of the complainant made on solemn affirmation that in reply to the court question he has stated that he was married to Sandhila @ Sandhila Tiwari (petitioner no.2) in April, 2007. After marriage she stayed at her matrimonial home for 2-3 months and thereafter she did not live with him continuously. She spent most of her time at her parental home. In Vadodra (Gujrat) he has filed an application under Section 9 of the Hindu Marriage Act in December, 2014 in the Family Court. He also admitted in reply to court question that his wife has filed an application for maintenance against him.

12. The plaint of the suit for restitution of conjugal rights filed by the complainant under Section 9 of the Hindu Marriage Act, which has been brought on record as Annexure-3 to the present application is not disputed by the complainant.

13. On perusal of the plaint, I find that the same was filed on 11.12.2014 i.e. much prior to the filing of the instant complaint. Paragraphs 3 to 5 of the plaint read as under:

“3. The applicant submits that from beginning opponent was not ready to perform her marital obligations, many times she use to say that you are a good person but you are not a husband upto my mark, I was dreaming a handsome and tall husband. But, applicant was not ready to break-up with the opponent so he has not even uttered a



word against the opponent with the hope that opponent will be all right after some lapse of time.

*4. The applicant submits that to avoid this things and stay with the opponent, he has taken personal loan from HDFC Bank in April 2012 and also took some advance from his company, where he is serving. After that the applicant had informed her to search a residential plot in low budget, opponent said that she will discuss the matter with her father. In first week of November 2012, they have selected one plot costing Rs. 6,00,000/- and ask to send the money in her father's account, at that time the applicant had deposited Rs. 1,85,000/- by Cheque in her father's account and Rs. 30,000/- in her account by a Card to Card transfer. In October 2010, applicant had given Rs. 88,000/- by Cash to her father by taking personal loan, at that time the opponent had promised that, her father will **give Rs. 1,50,000/- and she will borrow Rs. 2,00,000/- but I have to pay 12% interest i.e. Rs. 4,000/- p.m. for that amount until the applicant will pay the full amount.** After that all of sudden one day the opponent said on telephone that tomorrow they are going to do Sale Deed, so come immediately, but it was not possible for the applicant to reach there, the opponent has taken the land (plot) in her name. After this even the opponent told that*



*she will come to Vadodara in February 2013, she came here in February 2013 and stay here for one month, than she said that you are paying Rs.4,000/- as a interest so its better if you take another loan and pay them at least Rs. 1,00,000/- so you have to pay Rs.2,000/-only, than the applicant had applied for the loan and get Rs. 1,00,000/- from the loan as a personal loan and deposited the said amount in opponent's father's account by Cheque. In third week of April 2013, opponent told that she will going for and exam and if she will not clear this exam than she has to appear in another exam and she assured that once she will get the job, she will come back to me. The applicant requested many times that now she is a married woman and need to stay with me and perform legal obligations the applicant also told her that if she wants to further study or to do job, she can do all these things with me at Vadodara, but opponent did not listen anything and told the applicant that this is her final decision and then she left Vadodara i.e. matrimonial home. After May 2013, applicant told her many times, but either she is not responding applicant's phone or if she picked up his phone, she said that now I am not with you and I want to live my own life at my own way. She also told that **she don't know that what will happen in future, but honestly speaking "I don't***



want to stay with you now”.

5. The applicant most respectfully submits that; sometimes she was using abusive language for me and my family, at that time she had told me that due to her father’s pressure she is living here with me, otherwise she did not want to live with me. On oath applicant submits that when even for some period opponent was with me I have taken all due care of her, I have respected her lot, and even never raise my voice against her, even though she has deserted me and left me without any reason. She had forced me to invest huge amount for purchase of plot nearby her parents house, even though she has left me I have requested many times her and her family to sale the particular land and return my money, so that I can wind up all my loans but they are not ready to listen anything and at last the opponent has withdrawn her company and not ready to come back since April 2013.” (emphasis mine)

14. From perusal of the above averments, it would be manifest that the allegations made in the instant complaint is quite different from the pleadings made in the suit filed by him in the Family Court at Vadodara.

15. From a reading of the plaint of the matrimonial suit, it would be apparent that there was no inducement on the part of the



parents of the petitioner no.2 to the complainant for the purchase of plot. It was a conscious decision of the complainant to purchase the plot on the advise of his wife. Even though he knew that the plot was purchased in the name of his wife, as he could not travel to Muzaffarpur on the date of execution of sale deed, he had no grievance in this regard and he wanted to live together with his wife. It would further appear from the reading of the plaint that when his wife did not stay with him he requested her to sell the plot so that he may redeem his loan amount but she did agree to the proposed idea. As far as petitioner no.1 is concerned, it has been stated in the suit that the complainant transferred money for purchase of plot through his account.

16. Keeping in mind the averments made in the suit for restitution of conjugal rights filed by the complainant, when I closely give a look to the allegations made in the complaint, I find that they are not only absurd but are also manifestly attended with mala fide for wrecking vengeance of the accused persons with a view to spite them due to private and personal grudge. The complaint is nothing but the result of matrimonial discord and incompatibility. There is nothing unusual in the society one like about the purchase of plot in the name of wife by the husband. Only because, the wife does not agree to sell the property purchased in her name by the husband, it cannot be said



that she has cheated her husband. There is no element of cheating in the present case. I am of the opinion that allowing such criminal prosecution to continue would amount to an abuse of process of the court.

17. Resultantly, the impugned order dated 14.06.2017/ 21.11.2017 passed by the learned Additional Chief Judicial Magistrate-XV, Vaishali at Hajipur and the entire proceedings of Complaint Case No.C114 of 2016 are set aside.

18. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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