

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4140 of 2016

Arising Out of PS.Case No. -392 Year- 2015 Thana -KATIHAR COMPLAINT CASE District -
KATIHAR

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1. Tribhuwan Prasad Singh @ Tribhuwan Singh Son of Late Ramchabila Singh
2. Rajbhuwan Singh Son of Late Ram Chabila Singh
3. Kanchan Devi Wife of Late Kanhaiya Singh All resident of Laliyahi, P.S.
Sahayak, District - Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. Sailendra Kumar Singh Son of Late Bhuneshwar Pd Singh R/o Gowsala, P.S.
Katihar, District - Katihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Pandey
For the Opposite Party/s : Mr. N. K. Agrawal, Sr. Adv.
Mr. Bimal Kumar
Mr. Birendra Kumar
For the State : Mr. Sunil Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 18-09-2018

Heard the learned counsel for the petitioners, O.P. No. 2
as well as the State.

The petitioners seek quashing the order dated
22.05.2015 passed by learned Chief Judicial Magistrate, Katihar in
C.A. Case No. 392/2015, whereby the court below has found *prima*
facie case for offences under Sections 406 and 420 of the Indian Penal
Code against the petitioners.

Learned counsel for the petitioners has submitted that
for same cause of action complainant has filed Title Suit No. 80 of



2015 for specific performance of contract. Copy of plaint of Title Suit No. 80 of 2015 is annexed as Annexure-4 to the petition.

Learned counsel for the petitioners has submitted that petitioners were ready to execute the sale deed as per agreement, which has been annexed as Annexure-2, but the complainant himself started raising dispute that area is not complete.

Learned counsel for the petitioners has further submitted that they were ready to execute the sale deed but in the meantime, on 23.03.2015 the complainant filed suit for specific performance of contract. The trial of suit is proceeding. The witnesses have already been examined. The petitioners have appeared in that suit and are contesting the same.

Learned counsel for the petitioners has submitted that the complaint petition has been filed on 13.02.2015 levelling allegation that the petitioners are not executing sale deed as per agreement after receiving the advance money. It is further submitted that both parties have admitted that agreement was entered into between them and amount of Rs. 20 lacs was paid as advance. It is further submitted that petitioners are ready to return Rs. 20 lacs to the complainant.

Learned counsel for the O.P. No. 2 has submitted that since suit for specific performance of contract is pending, he cannot take back the advance money. It is further submitted that the complaint petition has been filed because petitioners were not ready to execute sale



deed. This fact has also been observed by a Co-ordinate Bench of this Court in order dated 30.08.2016 passed in Cr. Misc. No. 55944/2015, while hearing bail petition of petitioners.

This Court after looking into plaint of Title Suit No. 80/2015 (Annexure-4) finds that for same land as mentioned in the complaint the aforesaid suit was filed.

The main grievance of the complainant in the complaint petition is that petitioners are not executing sale deed after receiving the advance amount of Rs. 20 lacs.

The complainant has already filed suit for specific performance of contract vide T.S. No. 80/2015, for redressal of his grievance.

This Court is of the view that when dispute between the parties is of civil nature the continuation of criminal proceeding against the petitioners will be abuse of process of law.

The Hon'ble Supreme Court in case of ***Ram Biraji Devi Vs. Umesh Kumar Singh*** reported in (2006) 6 SCC 669 has held that *Even if the allegations made in the complaint are accepted to be true and correct the appellants cannot be said to have committed any offence of cheating or criminal breach of trust. Neither can any guilty intention be attributed to them nor can there possibly be any intention on their part to deceive the complainant. Averments of the complaint and statement of the complainant and his witnesses recorded by the*



Magistrate would amount to civil liability inter se the parties and not criminal liability. Hence, cognizance taken by the Magistrate was clearly an abuse of the process of court warranting interference in the interest of justice.

Therefore the continuation of instant criminal case against the petitioners will be abuse of process of court. The grievance of complainant as mentioned in the complaint petition can be properly adjudicated in Title Suit pending between the parties for specific performance of contract.

In the result, the impugned order passed by the learned court below is not in accordance with law.

Accordingly, the impugned order dated 22.05.2015 passed by learned Chief Judicial Magistrate, Katihar along with entire criminal proceeding against the petitioners is hereby quashed.

This Criminal Miscellaneous is hereby allowed.

(Sanjay Priya, J.)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	08.10.2018
Transmission Date	08.10.2018

