

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46347 of 2012

Arising Out of PS. Case No.-49 Year-2011 Thana- ARARIA District- Araria

Mir Md. Sajjad Alam, S/o Late Mir Md. Jamiluddin, Resident of Village-
Belwa, Millat Nagar, Ward No. 2, P.S.- Araria, District- Araria

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Md. Istaque Hussan S/o Late Ali Hussan R/Vill- Khalidabad, Ward No. 13/25 P.S- Dist- Araria.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vijay Anand, Advocate
For the Opposite Party/s	:	Mr. Binod Kr. Singh, Advocate
		Mr. Mukesh Kr. Anand, Advocate
For the State	:	Mr. Jharkhandi Upadhaya, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 20-12-2018

Heard learned counsel for the petitioner; learned A.P.P.
for the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

“That the present application is being filed for challenging the order taking cognizance dated 17.08.2012 passed by Sri A.K. Dixit, Judicial Magistrate, Araria in G. R. Case No. 225/2011 arising out of Araria P.S. Case No. 49/2011 whereby and where under the learned court below was pleased to took cognizance under section 406, 420, 120(B) & 506 of the Indian Penal Code.”



3. The petitioner is accused of having fraudulently transferred the land for which agreement was executed with the petitioner. It is alleged that on 11.04.1995, an agreement was made for sale of land for consideration of Rs. 1,50,000/- out of which Rs. 5,000/- was paid and thereafter, despite repeated request, when sale deed was not executed in the year 2003-04, the informant further paid a sum of Rs. 1,11,300/- but still the petitioner refused to execute document and took the stand that the price had increased to Rs. 4,50,000/-. It was stated that the informant with the help of his wife paid a further amount of Rs. 3,08,700/- in cash through Bank transfer and, thus, the total amount paid was Rs. 4,25,000/-. It was submitted that though a second agreement was signed in the year 2007 but the petitioner has executed sale deed in favour of another person.

4. Learned counsel for the petitioner submitted that this is purely a civil dispute and the opposite party no. 2 has already moved the Court below in Title Suit No. 175 of 2010, which is pending before the Sub-Judge 1st Araria for specific performance of the contract in respect of the suit land. It was submitted that the allegation itself shows the frivolous nature, inasmuch as, when in the year 1995 there was an agreement for sale, and the stipulation was that within two months the rest of the amount would be paid,



still the same was not done and only Rs. 5,000/- out of Rs. 1,50,000/- had been paid and that too in the year 1995. It was submitted that thereafter even in September, 2007, when a fresh agreement was executed, it was written that if the petitioner did not execute the sale deed then the opposite party no. 2 would be free to take recourse to civil and criminal proceedings and also get the sale deed executed after depositing Rs. 25,000/-. Learned counsel submitted that thereafter, even as per the own showing of the opposite party no. 2, no steps were taken by him and, thus, obviously the petitioner was free to execute the sale deed, which has been done after 14 months of the so called second agreement with the opposite party no. 2. Learned counsel submitted that from no angle, it can be said that there is any criminal aspect and it is purely a case of grievance of the petitioner for return of his money only for the reason that despite him being aware that in the year 2008 itself, the land has been sold through registered sale deed to another person, there cannot be any question of specific performance without the said sale deed being first challenged and declared to be null and void, which relief has not been sought by the opposite party no. 2 in the title suit.

5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the petitioner has played fraud and



cheated the opposite party no. 2 by taking money and not executing sale deed in his favour. However, on a direct query of the Court as to how criminal offence was made out and why the opposite party no. 2 had not offered to pay the rest amount within a reasonable time and defaulted twice in the past right from the year 1995, coupled with the fact that no relief was sought in the title suit for cancellation of the said sale deed and also that once the matter has been taken up by opposite party no. 2 himself before the Civil Court, how criminal proceedings are maintainable, learned counsel had no reply.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. From the plain reading of the F.I.R., no criminal offence is made out, even if what has been stated is accepted to be true at its face value. Further, the only grievance made out is that despite having paid part of the amount for execution of a sale deed, that too pursuant to some agreements, the same not being done, in the considered opinion of the Court, can only form a ground for maintaining a suit before the Civil Court of competent jurisdiction, either for return of the money or for specific performance after cancellation of the sale deed executed by the petitioner in favour of a third



party. Thus, no criminal offence being made out from the F.I.R. itself, the Court finds that the criminal case against the petitioner itself is an abuse of the process of the Court.

7. Accordingly, for the reasons aforesaid, the application is allowed. The order dated 17.08.2012 passed by the Judicial Magistrate, Araria in G.R. No. 225 of 2011 arising out of Araria P.S. Case No. 49 of 2011 taking cognizance against the petitioner under Sections 406/420/120(B)/ 506 of the Indian Penal Code is quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

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