

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40321 of 2015

Arising Out of PS. Case No.-3325 Year-2010 Thana- PATNA COMPLAINT CASE District-
Patna

-
-
1. Anand Kumar Verma son of Late Balram Das Verma, resident of C-13 Nandan Home Apartment, Baily Road, Khajpura, Police Station- Rukunpura, District Patna
 2. Rishi Kumar Verma son of Late Balram Das Verma, resident of House No. 110, Road No. 1-E, New Patliputra Colony, Police Station – Patliputra, District Patna
 3. Madan Mohan Verma son of Late Balram Das Verma, resident of HMT Officers Quarter, Pinjour, Police Station Panchkula, District Haryana

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Rakesh Kumar Sinha son of Sri Devendra Kumar Sinha, resident of Raj Kumari Sadan, Langar Toli, D N Das Lane, Police Station Kadamkuan, District Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Sinha, Sr. Advocate Mr. Shambhu Sharan, Advocate
For the State	:	Mr. Ashok Kumar, APP
For Opp. Party No. 2	:	Mr. Jagannath Singh, Mr. Rakesh Kumar, Mr. Pushkar Kumar Rai, Advocates

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 18-07-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing an order dated 09.05.2013 passed by the Judicial Magistrate 1st Class, Patna in Complaint Case No. 3325 C of 2010, whereby cognizance under Section 406 read with Section 418 of the Indian Penal Code has been taken against the petitioners.



Petitioners are owners of land bearing Plot no. 572, Holding no. 213A, Touzi no. 692, Ward no. 13, Circle no. 27 situated in the district of Patna. It is said that for a total cost of Rs.67 lakhs and on payment of advance consideration of Rs.11 lakhs an agreement for sale was executed on 26.11.2007 and it was agreed that within six months the remaining amount shall be paid and sale deed executed. It is the case of the complainant that a further sum of Rs. 5 lakhs was paid but when the sale deed was not executed it is said that the complainant filed a suit for specific performance of the agreement. It is the case of the complainant in the complaint itself that a suit for specific performance which was filed in the year 2010 being Title Suit No. 224 of 2010 is pending before the Sub Judge, Patna. However, after filing of the suit on the ground that the land has been sold to some other person the complaint in question has been filed and the complaint having been registered this application under Section 482 CrPC.

On a bare reading of the complaint as is evident available on record it is seen that except for admitting the fact that the agreement was executed in the year 2007 and only Rs.11 lakhs was paid in advance there is nothing in the complaint to show that the complainant has paid the entire consideration. On the contrary, the complainant has himself instituted a suit for specific



performance of contract and now the complaint has been filed only on vague allegation that after filing of the suit the complainant has been dispossessed and agreement has been entered into with some other person. Even though during the course of hearing learned counsel for the complainant opposing the prayer made in the application by placing reliance on the judgment of the Supreme Court in the case of *Medchl Chemicals & Pharma P. Ltd. vs. M/s Biological E. Ltd. & Ors. [2000(3) PLJR 56]* tried to indicate that a criminal complaint in a civil proceeding can parallelly be drawn on the principles referred to and that the same is permissible only if the ingredients necessary for constituting an offence under Section 406 and 418 IPC are made out on a bare reading of the complaint.

In this case, a bare reading of the complaint goes to show that except for contending that after executing an agreement the land has been sold and that also after the suit for specific performance of contract was filed but nothing has been indicated as to how ingredients necessary for constituting an offence under Section 406 read with Section 418 IPC is made out. It is a case where civil dispute after its institution at the instance of the complainant is tried to convert into a criminal proceeding where in fact the ingredients necessary for constituting an offence are not made out. In the facts and circumstances of the case, finding the



complaint to be wholly unsustainable and no offence made out this Court has no hesitation in allowing this application and quashing the complaint.

Accordingly, this application is allowed. Order dated 09.05.2013 is rejected and proceeding in Complaint Case No. 3325 C of 2010 pending in the court of Judicial Magistrate 1st Class, Patna stands quashed.

(Rajendra Menon, CJ)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.07.2018
Transmission Date	20.07.2018

