

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13830 of 2015**

Arising Out of PS. Case No.-263 Year-2013 Thana- SIWAN CITY District- Siwan

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1. Rukmina Kuer, Wife of Late Triloki Mishr
 2. Mritunjay Kumar Pandey Son of Sachidanand Pandey
 3. Prabhavati Devi Wife of Bachchanath Tiwary
 4. Vidyawati Devi Wife of Sachidanand Pandey
 5. Sachidanand Pandey Son of Mathura Pandey
- All are resident of Gulzar Bazar, P.S. Siwan Nagar, District - Siwan

... .. Petitioner/s

Versus

1. State Of Bihar
2. Manoj Kumar Singh Son of Madan Singh Resident of Pratappur, P.S. Hussainganj, District - Siwan

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar
For the Opposite Party/s : Mr.Navin Kr.Panday, APP
For the Opposite Party No. 2 : Mr. Mukesh Kant, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

6 22-11-2019 Heard the learned counsel for the parties.

This petition is directed against the order dated 20.01.2015 passed by the learned Chief Judicial Magistrate, Siwan in connection with Nagar P. S. Case No. 263 of 2013, whereby cognizance has been taken for the offences punishable under Sections 406, 420, 467, 468, 469, 471, 472, 504 and 34 of the Indian Penal Code.

It has been alleged in the F.I.R., which has been registered on the basis of a complaint lodged by the



Opposite Party No. 2, that Rs. 19,00,000/- was deposited by the Opposite Party No. 2 with the petitioners for transfer of a plot of land which they intended to sell. The land could not be transferred for some reason or the other, but assurance was given to the informant / Opposite Party No. 2 that the money shall be returned. Out of Rs. 19,00,000/-, only Rs. 2,00,000/- was returned by the instance of petitioner no. 5 who too had a share in the property and had accepted some part of the consideration money. With respect to the rest of the amount, there was no definite assurance by the petitioners to return the amount. The cause which actually triggered the lodging of the complaint and the consequential F.I.R. is that even though the petitioners gave a power of attorney in favour of Opposite Party No. 2, but simultaneously also made attempts for selling of the said plot of land to somebody else.

The petitioners have stated that this accusation is absolutely false and from the own showing by the Opposite Party No. 2, no offence under Sections 406, 420 or 467 can at all be said to have been made out. If the petitioners had



any intention to defraud the Opposite Party No. 2, an amount of Rs. 2,00,000/- would not have been returned at the instance of petitioner no. 5 and power of attorney with respect to said land would not have been executed.

The petitioners have further argued that in fact, even after the power of attorney was executed in favour of Opposite Party No. 2, he, because of his political connections, entered in the house of the petitioners along with his bodyguards and tried to threaten the petitioners. A 144 Cr.P.C. proceeding between the parties is also pending. Apart from this, a Title Suit with respect to cancellation of sale-deed with third party also has been filed, the details of which have not been provided in the petition.

It, therefore, appears that there is dispute with respect to the possession of plot of land for which it is claimed by the Opposite Party No. 2 that it has been purchased but the sale-deed could not be executed as the entire money was admittedly not deposited by Opposite Party No. 2.

In any view of the matter, if the money was not



paid, there is no reason for the Opposite Party No. 2 to have expected the conveyance of property. Whether in the event of the property not being transferred in the name of Opposite Party No. 2, the petitioners were required to return the amount would be dependent on any agreement between the parties. Neither in the complaint petition nor in the application preferred by the petitioners, has this fact been stated.

The F.I.R. also does not at all refer to the source or the time for giving such heavy amount in cash. Any cash transaction cannot be taken notice of and it would only depend upon the averments of the parties whether such amount was given or accepted.

Thus, it would be difficult for this Court to interfere with the order of the cognizance at this stage, when the evidence is only in the shape of oral averments on behalf of the parties.

This Court therefore, deems it appropriate not to interfere at this stage.

The petition is dismissed.



However, the petitioner would be at liberty to approach the court below and prefer a requisite petition for discharge on the grounds which have been raised in the present petition, if such a petition has already not been filed and disposed off.

Should such an application be filed, the court below shall take into account all these facts, which have been noted above and shall pass a reasoned order in accordance with law, without being prejudiced with the fact that the present petition has not been entertained by this Court.

The petition is disposed off with the aforesaid liberty.

(Ashutosh Kumar, J)

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