

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.528 of 2019

Arising Out of PS. Case No.-490 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

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Chandrakant Kumar, Son of Kalicharan Mahto, Resident of Village-Kosut,
P.S.- Dhanarua, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Registrar General, Patna High Court, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Niranjana Kumar, Advocate Smt. Smita Prasad, Advocate Mr. Ranjan Kumar Singh, Advocate
For the Respondent-State:	:	Mr. Sunil Kumar Mandal, SC-3 Ms. Neelam Kumari, AC to SC-3
	:	Mr. Bipin Kumar, AC to SC-3
	:	Mr. Arjun Prasad, AC to SC-3
For the High Court	:	Ms. Smriti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 03-04-2019

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the Patna High Court.

2. This application under Article 226 and 227 of the
Constitution of India has been filed by the petitioner for directing
the respondent authorities to pass order in accordance with law in
Complaint Case No.490(c) of 2018.

3. A copy of Complaint Case No.490(c) of 2018 has
been brought on record and marked as Annexure-1 to this petition.
On perusal of the complaint, it would appear that the petitioner has



alleged in the complaint that he had paid Rs.2 lakh to the accused persons namely, Most. Premlata Devi, Dilip Kumar, Ram Pravesh Kumar, Sumesh Kumar and Anirudh Kumar on 20.05.2016, Rs. 3,00,000/- (three lakhs) on 05.08.2018 and Rs. 1,22,332/- (one lakh twenty-two thousand three hundred thirty two) on 09.05.2018 for purchase of a piece of land under an agreement. The possession of the plot was also given to him. While accepting the last installment on 09.05.2018, the accused Ram Pravesh Kumar had promised that he would intimate the date for executing the sale deed after having consultation with his mother and brothers. He invested about Rs.5,00,000/- (five lakhs) in development of the land, but the accused persons neither executed the sale deed nor returned the amount taken by them and sold the land to another person on 10.07.2018. He further alleged that on 11.07.2018 when he made an inquiry from the accused persons, they man-handled him and fired from pistol, but the shot did not hit him. Lastly, on 26.08.2018, the accused Ram Pravesh Kumar flatly said that neither he will execute the sale deed nor return the amount. On 27.08.2018, an information was given to the police station, but no action was taken.

4. Learned counsel for the petitioner submitted that though the said complaint was filed on 29.08.2018, no progress



has been made till date in spite of the solemn affirmation of the complainant. He has contended that the petitioner is not even being supplied the certified copy of the complaint. Till date, the accused persons have not been summoned to face trial. He contended that inaction on the part of the learned Sub Divisional Judicial Magistrate in summoning the accused persons to face trial is causing prejudice to the rights of the petitioner.

5. On the other hand, learned counsel appearing for the State submitted that no cognizable or non-cognizable offence is attracted on the basis of the allegations made in the complaint. The complaint is quite vague. The complainant has not even furnished details of the land in the complaint. He has not even mentioned as to whom the payment was made. A vague statement has been made in the complaint that the accused persons were paid a total amount of Rs.6,02,332/- (six lakh two thousand three thirty two) in three different installments. There are altogether five persons who have been named as accused. It is not known to whom the payment was made. It is also not known as to whether the payment was made in cash or through any other legal negotiable instrument. He submitted that even otherwise the allegations made in the complaint would at best make out a case of civil breach of agreement. He has further contended that the complaint has been



filed belatedly. At best, the complaint would give rise to a civil dispute and no criminal offence is made out. In support of his submission, he has placed his reliance on the decision of the Supreme Court in **Murari Lal Gupta Vs. Gopi Singh [2005 (13) SCC 699]**.

6. Learned counsel appearing for the High Court submitted that since the case has been listed today, he has no instruction into the matter.

7. Having heard the parties and perused the record, though this case has been filed by the petitioner seeking direction from the Court that the court below should pass order on the complaint of the petitioner and the accused persons be put on trial, on perusal of the complaint, I find that the same is an abuse of the process of the Court. The Courts are flooded with such frivolous litigation. It is high-time that once such a case is brought to the notice of this Court, even though the accused persons have not approached the Court, as they may not be aware of any proceeding against them in view of the fact that summonses have not been issued, this Court in exercise of its power under Article 226 and 227 of the Constitutions of India should bring an end to such frivolous litigation.



8. It has rightly been pointed out by the learned counsel for the State that the allegations made in the complaint is quite vague. No detail of the land, for which the agreement is alleged to have been made, has been given in the complaint. It is also not mentioned as to whether payments were made by the complainant in cash or through any negotiable instrument. It is also not clear as to who received the payments made by the complainant. It is also not clear with whom the agreement was entered into. It is not alleged that the accused persons were not possessing land or that they were not competent to transfer the land. What is alleged is that after entering into agreement on 20.05.2016, payment in instalments were made to the accused persons between 20.05.2016 and 09.05.2018. What is further alleged is that on 10.07.2018 the land was sold to some other persons. Neither the detail of the land has been mentioned nor the person to whom the land was sold on 10.07.2018 is mentioned in the complaint nor the mode of payment is disclosed nor the agreement has been filed with the complaint.

9. In **Mururi Lal Gupta Vs. Gopi Singh** (supra), the respondent Gopi Singh had filed a criminal complaint against the petitioner Murari Lal Gupta, complainant of an offence under Sections 406 and 420 of the Indian Penal Code. According to the



complaint, the petitioner had a property in Delhi in respect of which he entered into an agreement to sell in favour of the respondent for consideration of Rs.4.50 lacs. The amount of 3.50 lacs was paid. The balance of Rs. 1 lac was to be paid at the time of registration of sale deed and delivery of possession. Thereafter, the petitioner did not honour the agreement in spite of three legal notices have been given. On the basis of these allegations the respondent had alleged that the petitioner Murari Lal Gupta had cheated him. After recording the statement of complainant and three other witnesses examined on his behalf, the trial court arrived at a finding that it was a pure and simple case of breach of an agreement to sell creating civil liability between the parties and the appropriate remedy for the respondent was to file a civil suit for specific performance of the agreement and not to file a criminal complaint. On the basis of the aforesaid findings, the learned Judicial Magistrate directed the complaint to be dismissed leaving the civil remedy open to the respondent. Being aggrieved by the order of the Judicial Magistrate, the respondent filed a revision in the court of Sessions. The learned Sessions Judge allowed the revision petition forming an opinion that in spite of the civil remedy being available a criminal prosecution was not barred. The complaint was revived. The petitioner filed a transfer



petition under Section 406 of the Code of Criminal Procedure seeking transfer of criminal case from the court of learned Judicial Magistrate, Madhepura in the State of Bihar to a competent court in Delhi. After hearing the parties, the Supreme Court issued notice to the respondent and stayed further proceedings. While issuing the notice, the Supreme Court also directed to show cause why the complaint itself be not directed to be quashed in view of the dispute being of civil nature.

10. Having perused the pleadings of the parties and having taken into consideration all the materials made available on record by the parties, a three Judge Bench of the Supreme Court in Murari Lal Gupta's case held that the criminal proceedings initiated against the petitioner was wholly unwarranted and complaint is an abuse of the process of the Court and the proceeding was quashed.

11. The ratio laid down by the Supreme Court in Murari Lal Gupta is squarely applicable to the facts of the present case. The complaint launched by the petitioner is nothing but an abuse the process of the Court and the proceedings of the complaint are liable to be quashed.

12. Accordingly, while dismissing the writ petition filed by the petitioner, the Complaint Case No. 490 (c) of 2018 pending



in the court of learned Sub-divisional Judicial Magistrate,
Masaurhi, Patna is hereby quashed.

(Ashwani Kumar Singh, J.)

Sanjeet/R.Ranjan

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2019
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