

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48752 of 2014**

Arising Out of PS. Case No.-714 Year-2014 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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1. Krishna Kumar Dutta and Anr Son of Late Dukh Haran Deo
 2. Smt. Indu Kumari Wife of Sri Krishna Kumar Dutta Both residents of Village - Manohar Bigha, P.S. - Telhara, District - Nalanda.

... .. Petitioner/s

Versus

State Of Bihar and Anr

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Dilip Kumar Sinha, Advocate
For the Opposite Party/s	:	Mr. Balmiki Pandey 'Bhaskar', Advocate
For the State	:	Ms. Asha Kumari, APP
		Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 21-06-2019

Heard learned counsel for the petitioners; learned APP
for the State and learned counsel for the opposite party no. 2.

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

*“That this is an application for quashing
of the order dated 17.11.2014 passed by Sri
Jeetendra Kumar learned Judicial Magistrate 1st
Class Hilsa, District- Nalanda in Complaint Case
No.714(C) /2014 whereby and whereunder the
learned Magistrate has taken cognizance under
section 323 and 406 of the Indian Penal Code
against the petitioners and directed the office to
issue summons against the petitioners.”*



3. The allegation against the petitioners is that petitioner no. 1 had taken Rs. 11,000/- as advance and entered into an agreement on 13.05.2014 for sale of 22 decimals of land belonging to him. It is alleged that later on Rs. 5,00,000/- cash was also given and on some pretext, the receipt was not granted and later on the opposite party no. 2 alleges that he came to know that on the said land, Rs. 2,00,000/- was taken from a third party. It is alleged that the terms for paying the entire amount of Rs. 14,90,000/- was till 30th September, 2014 and, thus, prior to the same, the petitioner no. 1 settling the land with a third party was with *mala fide* intention to cause undue loss to the petitioners.

4. Learned counsel for the petitioners submitted that though initially, as per the agreement the period for making full payment was 30th September, 2014 but due to the immediate requirement of money for the marriage of his daughter, the petitioner no. 1 had sent two legal notices to the opposite party no. 2 to pay at least Rs. 10,00,000/- by 20th June, 2014 and in the second legal notice dated 27.06.2014, it was stated that if the entire consideration amount was not paid within ten days, it would be presumed that the opposite party no. 2 was not interested in buying the land and the same would be sold to someone else. Learned counsel submitted that the petitioners were in dire need of



money for the marriage of their daughter and, thus, asking for money for the same was quite natural. It was further submitted that even the sale made of the land to the person in question was on 7th October, 2014 i.e., after the expiry of the time limit fixed for making payment by the opposite party no. 2 of the remaining amount. Learned counsel submitted that the averment of having paid of Rs. 5,00,000/- in cash without taking receipt is also incorrect as no such payment in cash was made to the petitioners. Summing up his arguments, learned counsel submitted, that at least as far as the petitioner no. 2 is concerned, she has nothing to do in the entire episode as all the so called agreement and transactions were between the petitioner no. 1 and the opposite party no. 2. It was submitted that the allegation that the petitioners had abused and had become aggressive to assault, as far as petitioner no. 2 is concerned, is both unbelievable and only to exert undue pressure on petitioner no. 1, his wife has also been made accused.

5. Learned APP submitted that on the basis of materials before it, the Court has taken cognizance which does not require interference.

6. Learned counsel for the opposite party no. 2 submitted that the conduct of the petitioners of sending legal



notice demanding payment much prior to the time fixed in the written agreement between the parties itself shows their ill intention and fraudulent behaviour of selling the land in question to somebody else upon getting a higher price, even though they were bound by the agreement between the parties i.e., the petitioner no. 1 and the opposite party no. 2. It was further submitted that actually it was the petitioner no. 2 who had instigated the petitioner no. 1 not to return the money and, thus, she is also equally liable. At this juncture, when the Court made a pointed query to learned counsel for the opposite party no. 2 as to how he can make such submission when in the complaint case, no such specific allegation has been made against the petitioner no. 2 that she had abused and instigated the petitioner no. 1 and only a general and bald allegation has been made, learned counsel fairly submitted that petitioner no. 2 being a lady may be granted indulgence and that he would not oppose such relief to the petitioner no. 2.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, especially the fair stand taken by learned counsel for the opposite party no. 2 that the petitioner no. 2, who is the wife of petitioner no. 1 and who is not connected with either the agreement or the transaction



between the parties, in the opinion of the Court, making her go through the rigors of trial would be an abuse of the process of the Court.

8. However, with regard to petitioner no. 1, the Court does not find any error in the order impugned. The petitioner no. 1 shall have ample opportunity to prove his innocence during trial before the Court below itself.

9. Accordingly, the entire criminal proceeding arising out of Complaint Case No. 714 (C) of 2014, pending before the Court below at Hilsa in the district of Nalanda, including the order date 17.11.2014 by which cognizance has been taken, as far as it relates to petitioner no. 2, stands quashed.

10. The application with regard to petitioner no. 1 stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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