

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 3796 of 2015**

Arising Out of Complaint Case No.-98 C Year-2014 Thana- KHAGARIA COMPALINT
CASE District- Khagaria

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Parmanand Chaudhary, Son of Late Mukhlal Chaudhary, Resident of Village
& P.O.- Samaspur, P.S. Maheshkhunt, District- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sunil Keshri, Son of Bishundev Keshri, Resident of Village-Maheshkhut,
English Tola, P.S. Maheshkhunt, District- Khagaria.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Ms. Vagisha Pragya Vacaknavi and Mr. Binod Kumar Singh, Advocatets
For the Opposite Party No. 2	:	Mr. Manoj Kumar Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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

ORAL JUDGMENT

Date : 03-05-2019

Heard learned counsel for the petitioner; learned APP
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 this is an application on behalf of
the Petitioner for quashing order of cognizance
dated 29.04.2014 passed in Complaint Case No.
98(C) of 2014 by the learned Sub-Divisional*



Judicial Magistrate, Khagaria whereby and where under the learned Court found prima facie case u/s 323/420/406/468/120B IPC against the accused persons as well as the entire proceeding arising out of Complaint Case No. 98(C) of 2014 filed by O.P. No. 2 against the petitioner and 2 others pending in the Court of Sub-Divisional Judicial Magistrate, Khagaria.”

3. The allegation against the petitioner in the complaint case filed by the opposite party no. 2 is that even after receiving Rs. 5 lakhs for sale of a piece of land for which there was an agreement, despite the opposite party no. 2 having offered to pay the remaining amount of Rs. 27,12,812/- within the time fixed, the petitioner did not execute the sale deed and rather sold it to some other person.

4. Learned counsel for the petitioner submitted that from the entire reading of the complaint, no criminal offence is made out as, at best, it is a purely civil dispute. It was submitted that nowhere in the complaint there is any indication with regard to any act on the part of the petitioner which may justify maintainability of a criminal proceeding against the petitioner. Learned counsel submitted that even if it is accepted that there was some fault on the part of the petitioner and that the opposite party no. 2 had a cause of action with regard to non execution of sale deed by the petitioner for the land in question in his favour, for such relief, the only forum available in law was the Civil Court



of competent jurisdiction, either for specific performance of the agreement or for return of the money paid by the opposite party no. 2 to the petitioner. Learned counsel submitted that even otherwise, upon expiry of the time by which the remaining payment had to be made, a legal notice was sent to the opposite party no. 2 informing him that the advance given stood forfeited and further, a demand of Rs. 2 lakhs was made to compensate for the loss suffered by the petitioner. Learned counsel submitted that in the reply sent, such fact of there being an agreement and the time period having expired has been accepted, though the stand is that the opposite party no. 2 was ready to pay the remaining amount. Learned counsel submitted that even if such fact is accepted, the forum for adjudicating the dispute is the Civil Court and the same cannot be gone into in a criminal proceeding.

5. Learned APP fairly submitted that the dispute is purely civil in nature.

6. Learned counsel for the opposite party no. 2 submitted that before expiry of the period, he had also sent a legal notice to the petitioner stating that he was neither accepting the remaining amount nor executing the sale deed, which clearly shows the criminal intent of the petitioner to cheat and commit fraud, which is further proved by him transferring the land to a



third person. However, on a direct query of the Court to learned counsel for the opposite party no. 2, as to how a criminal proceeding is maintainable when clearly the issue relates to a dispute arising out of an agreement for sale, which is a purely civil matter and further, the fact of whether the opposite party no. 2 had the amount at the relevant point of time and was ready to give it to the petitioner and that he did not accept the same, has to be proved by adducing evidence before the Civil Court and for which no criminal proceeding can lie, learned counsel could not meet the query of the Court.

7. At this juncture, learned counsel for the petitioner submitted that the sale to a third party has been after six months of the expiry of the time fixed, as per the agreement, for payment of the total consideration amount by the opposite party no. 2 to the petitioner.

8. 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.

9. As has rightly been submitted by learned counsel for the petitioner, the entire allegations, even if taken at their face value and accepted, do not disclose any criminal aspect. From the same, it transpires that the dispute is purely civil in nature where



pursuant to some agreement between the parties, the allegation is that the petitioner has not acted as per the terms of the agreement. Moreover, the agreement itself was for sale of land for monetary consideration pursuant to an agreement and what would be the consequence of any violation of the terms of such agreement can only be adjudicated and fall within the exclusive domain of the competent Civil Court, where the parties would be required to adduce evidence in support of their stand and then an order can be passed either with regard to specific performance in terms of the agreement or for cancellation of the subsequent sale deed or even for return of the money paid by the opposite party no. 2 to the petitioner as also compensation thereon. However, criminal proceeding, in the present matter is clearly an abuse of the process of the Court.

10. The Hon'ble Supreme Court in **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, at paragraph no. 102 has enumerated categories where the Court would exercise its inherent power under Section 482 of the Code. The same reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have



extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing



efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. The present case, in the opinion of the Court, is covered under category 7 of the aforesaid decision in **Bhajan Lal** (*supra*) at paragraph no. 102.

12. Moreover, the Hon’ble Supreme Court in **Indian Oil Corpn. v. NEPC India Ltd.** reported as **(2006) 6 SCC 736**, at paragraph no. 13, has held as under:

“13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.....”

13. Further, the Hon’ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as **(1977) 2 SCC 699**, at paragraph no. 7, has observed as under:

“7.In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of



harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.....”

14. In the aforesaid background, the Court finds that the present case is totally *mala fide* and has been filed with the purpose of wreaking vengeance to harass the petitioner and for oblique reasons.

15. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 98(C) of 2014, pending before the Court below at Khagaria, including the order dated 29.04.2014 by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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