

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13343 of 2015

Arising Out of PS. Case No.-3082 Year-2006 Thana- PATNA COMPLAINT CASE District-
Patna

=====

Meena Devi wife of Late Chandeshwar Chaudhary resident of Rameshwaram
Bariatu Road, Bariatu, P.S. - Bariatu, District - Ranchi Jharkhand.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Surya Mohan S/o Late Narsinha Das resident of 108/B, Prince Apartment,
P.S. - Shastrinagar, District - Patna.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Tuhin Shankar

For the Opposite Party/s : Mr.Ajay Kumar-Iapp

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 14-05-2019 The present petition has been filed for quashing the

order dated 29.03.2007 passed in Complaint case no. 3082 (C)

of 2006 (Trial no. 2556 of 2006), by the Judicial Magistrate 1st

class, Patna, whereby and whereunder cognizance has been

taken for the offences punishable under Sections 406, 420, 120B

of Indian Penal Code.

The case in brief, as per the complaint filed by the

complainant i.e. the opposite party no. 2 herein is that the

complainant had purchased a flat in the Prince apartment,

Magistrate colony, Shasti Nagar, Patna upon a representation

made by the accused persons including the petitioner herein

about the defect free title of the land and the flats to be



constructed by the accused no. 2 namely Arvind Choudhary. The petitioner herein is said to be the owner of the plot in question where the apartment has been constructed, along with her sons. The accused no. 2 is stated to have compelled the complainant to purchase a flat in the said apartment. A development agreement dated 01.08.1999 is said to have been entered into between the accused no. 2 and the petitioner, authorizing him to construct the flats over the aforesaid land owned by the petitioner herein as well as to sell the flats falling in his share to the prospective buyers. The complainant, believing upon the representation made by the accused persons, had agreed to purchase the flat in question and paid the entire consideration amount to the accused no. 2 and he assured that possession of the flat in question would be given after completion of the apartment in the month of March, 2001. It is the further case of the complainant that after the possession was given to the complainant, he was forced to take electricity line from the meter of the accused no. 2 and pay commercial charges for the use of electricity on account of non-issuance of occupancy certificate by the Patna Regional Development Authority. The complainant is said to have handed over Flat no. 108, Block-B situated at Prince Apartment on 30.04.2001, however till date



the occupancy certificate has not been given, hence the accused persons have caused wrongful loss to the complainant and engaged in criminal misappropriation and cheating. The further case of the complainant is that he had also filed a consumer complaint before the District Consumer Grievances Redressal Forum, Patna against the accused no. 2 for rendering poor services to the complainant, whereupon the District Consumer Forum had allowed the complaint of the petitioner vide order dated 18.03.2006 passed in complaint case no. 160 of 2004 and the accused no. 2 was directed to furnish the occupancy certificate and pay a compensation of Rs. 11,000/- to the complainant.

It appears that the learned Court below, after recording the statement of the complainant and other witnesses on oath, has taken cognizance against the accused persons including the petitioner herein for the offences punishable under Sections 406, 420, 120B of Indian Penal Code.

The learned counsel for the petitioner has submitted that the entire complaint filed by the complainant against the petitioner herein is malafide and without any substance and also does not make out any case for the offences punishable under the Indian Penal Code, as would be apparent from a bare



reading of the complaint petition. It is further submitted that the actual facts of the case are that the petitioner is a widow and had a small piece of land in her name which was given to the builder i.e. the accused no. 2 and thereafter, the apartment was constructed and possession of the flat in question was handed over the complainant. It is further submitted that the subject matter of the present complaint is same and similar to the complaint filed by the complainant before the District Consumer Disputes Redressal Forum, Patna vide complaint case no. 160 of 2004, wherein the said Forum by a judgment dated 18.03.2006, had directed the accused no. 2 i.e. the builder/ developer to get the occupancy certificate issued in the name of the complainant and pay a compensation of Rs. 10,000/- as well as litigation cost of Rs. 1000/- to the petitioner herein. Lastly, it is submitted that as far as the petitioner is concerned, the complainant cannot be said to be having any grievance against her, as is apparent from the materials on record and if at all, anybody is responsible, it is the builder/ developer i.e. the accused no. 2, for which the complainant has already taken appropriate steps by approaching the Consumer Forum and getting a decree in his favour.

Per contra, the learned counsel for the opposite party no. 2, though does not dispute the fact that now nothing remains



to be complied with *qua* the accused persons, however he submits that the accused persons are liable to be prosecuted for engaging in cheating the complainant by providing deficient services.

I have heard the learned counsel for the parties and gone through the materials on record and I find that a bare perusal of the complaint petition does not make out any case *qua* the petitioner herein for the offences punishable under Sections 406, 420, 120B of Indian Penal Code. This Court further finds that at best, the allegations levelled in the complaint petition are in the nature of civil dispute and the petitioner has already taken recourse to civil proceedings. In this connection, reference be had to a case reported in **(2006) 6 SCC 736 (Indian Oil Corporation v. NEPC India Limited)** as also to a case reported in **(2011) 3 SCC (Crl.) 23 (Joseph Savaraj A. v. State of Gujarat and others)**, relevant paragraph whereof, is quoted hereinbelow :-

“25. In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the Appellant. The present FIR is an abuse of process of law. The purely civil Crl. A. @ S.L.P. (Crl.) No.2409 of 2007 dispute, is sought to be given a colour of a criminal offence to wreak vengeance



against the Appellant. It does not meet the strict standard of proof required to sustain a criminal accusation.”

This Court further finds that no case is made out against the petitioner herein for the offences under Sections 406, 420, 120B of Indian Penal Code, as is apparent from a bare perusal of the complaint petition, hence the order taking cognizance dated 29.03.2007, passed by the learned trial court is not sustainable in the eyes of law. It would be useful to refer to a judgment rendered by the Hon’ble Apex Court in the case of State of *Haryana v. Bhajan Lal (1992) Suppl.1 SC 335* which fully covers the present case.

Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the present petition is allowed and the order taking cognizance dated 29.03.2007 passed in complaint case no. 3082(C)2006 (trial no. 2556 of 2006), by the Judicial Magistrate, 1st class, Patna is quashed qua the petitioner herein.

There shall be no order as to costs.

(Mohit Kumar Shah, J)

rinkee/-

U		T	
---	--	---	--

