

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21304 of 2014

Arising Out of PS. Case No.-127 Year-2013 Thana- PURNIA COMPLAINT CASE District-
Purnia

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1. Gopal Kumar Sinha Son of Late Lala Sharda Prasad Sinha Resident of Mohalla New Sipahi Tola, P.S- K. Hat, District- Purnea.
 2. Sudip Mandal Son of Mantu Mandal Resident of Mohalla New Sipahi Tola, P.S- K. Hat, District- Purnea.
 3. Binay Kumar @ Vinay Kumar Son of Dukh Mochan Das Resident of Village Belwa, P.S- Sadar, (Muffasil, Rani Patra), District- Purnea.
 4. Punam Kumari Daughter of Kamla Prasad Pandit Resident of Newal Lal Chowk, P.S- K. Hat, District- Purnea.
 5. Vikash Sharma Son of Barun Kumar Sharma Resident of Village Musapur, P.S- Korha, district- Katihar.
 6. Seema Kumari Wife of Uttam Lal Mandal Resident of Village Karuveli, P .S- Kumar Chand, District- Katihar, at present residing at Nawall chowk, P.S- K. Hat, District- Purnea.
 7. Kundan Kumar Son of Kamla Prasad Singh Resident of Village Gaddi Ghat, P.S- Rupauli, District- Purnea.
 8. Barun Kumar Sharma Son of Late Bauseo Prasad Sharma Resident of Village Mirjapur, P.S- Korha, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Niraj Kumar Singh Son of Bijendra Prasad Singh, Resident of Mohalla Sudin Chowk, Tatma Toli, P.S. S.K. Hat, District Purnea.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajit Ranjan Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Opposite Party No. 2	:	Mr. Bijendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 02-01-2019

Heard learned counsel for the petitioners; learned A.P.P.

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 application is being filed to quash the order dated 4.3.14 passed by Sri Ajay Kumar learned Magistrate 1st Class Purnea in Compliant Case no. 127/2013 by which the learned Magistrate, has been pleased to take cognizance under Section 420 and 120(B) of the Indian Penal Code against, one Gholi Devi and petitioners. The case is pending in the court of Ajay Kumar 2, Judicial Magistrate, 1st Class, Purnea.”

3. The allegation against petitioners no. 1 and 2 is that they got Power of Attorney in their favour from accused no. 1 in the complaint filed by the opposite party no. 2 (complainant) despite the fact that she had already executed agreement with the opposite party no. 2 for the lands in question. It has further been alleged that petitioners no. 1 and 2 facilitated the sale of land to the rest of the petitioners.

4. Learned counsel for the petitioners submitted that the present case is totally frivolous and abuse of the process of the court. It was further submitted that from the entire compliant, there is no direct allegation against the petitioners as their transaction is admitted to be through accused no. 1, who is not before the Court.



It was submitted that the agreement between petitioners no. 1 and 2 with the other accused was a transaction/ agreement between them without there being any reference or whisper with regard to the agreement which the opposite party no. 2 claims to have entered into with the other accused. Learned counsel submitted that at best, the other accused may have to answer as to under what circumstances she got into agreement for the same piece of land, both with the opposite party no. 2 and petitioners no. 1 and 2 but for the same, no criminal liability can be fastened on the petitioners. It was further submitted that petitioners no. 1 and 2 have not executed the sale deeds in favour of petitioners no. 3 to 8 and it is the original land owner, i.e., the other co-accused who has directly executed and got registered the sale deeds. Learned counsel submitted that the ingredients of Sections 420 and 120B of the Indian Penal Code are not applicable in the present case for there is no cheating or dishonest inducement for delivery of property. It was submitted that at no point of time, even as per the plain reading of the compliant, the so called agreement between the complainant and the other co-accused has been referred to or is a part of the agreement between petitioners no. 1 and 2 with the other co-accused. Learned counsel submitted that the transaction between the petitioners and the other co-accused was totally



between them and whatever may have happened or took place between the complainant and the other co-accused, for the same, the petitioners cannot be held responsible, muchless any criminal liability fastened on them.

5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the petitioners were aware of the agreement between the complainant and the other co-accused and despite that they going ahead with the Power of Attorney and the sale/purchase of land, they cannot take the plea of innocence. However, neither the same has been alleged in the complaint nor any material in support of such contention brought on record.

6. 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. From the entire reading of the complaint, it is clear that the grievance of the complainant, at best, can be said to be against the other co-accused and the land owner, and against the petitioners there cannot be any grievance of the complainant, muchless any criminal attribute with regard to their conduct. Even going by the sections under which cognizance has been taken, the Court finds that none of the ingredients under Sections 420 and 120B of the Indian Penal Code are attracted even to indicate that the petitioners in any way had



cheated the complainant and had dishonestly induced for delivery of any property. Thus, when the basic ingredients of cheating and dishonestly inducing delivery of property are absent, there cannot be any charge under Section 120B of the Indian Penal Code also.

7. For the reasons aforesaid, the application is allowed. The order dated 04.03.2014 passed by the Magistrate 1st Class, Purnea in Compliant Case No. 127 of 2013 by which cognizance has been taken under Sections 420 and 120B of the Indian Penal Code, as against the petitioners, stands quashed.

(Ahsanuddin Amanullah, J)

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