IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.61 of 2018

Arising Out of PS. Case No.-2775 Year-2010 Thana- PATNA COMPLAINT CASE District-Patna

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Arti Jain, Wife of Sri Raj Kumar Jain, Resident of 1/E/96, Metro Paint and Chemical Company, New Patliputra Colony, Industries Area, P.S.- Patliputra, District- Patna at present Arti Jain GH/4, Mira Apartment, Flat No.7, Gate No.3, Mirabagh, West Bihar, New Delhi.

... ... Petitioner/s

Versus

1. State Of Bihar
2. Dhaneshwar Sah, Son of Late Bijali Sao, Resident of Budhnagar Road No.3, Postal Park, Dahini Bhawan, P.S.- Kankarbagh, P.O.- Lohianagar, District-Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pravin Kumar
For the Respondent/s	:	Mr.Sri Ram Anurag Singh

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL ORDER

6 20-06-2019 Heard learned counsel for the petitioner. No one appears on behalf of the opposite party No.2, though appearance through *Vakalatnama* is already there on the record.

2. This criminal revision has been preferred, under Sections 397 and 401 of the Code of Criminal Procedure, against the order dated 16.04.2011, passed by the learned Judicial Magistrate-1st Class, Patna in Complaint Case No.2775 (C) of 2010, whereby the learned Magistrate has held that there are sufficient grounds for proceeding against the petitioner for the offence under Section 420 of the Indian Penal Code.

3. The challenge is on the ground that bare perusal of the complaint petition and the attending materials would show that no ingredient of offence of cheating defined under Section 415 of the Indian Penal Code is made out. Hence, the impugned order suffers from non-application of judicial mind and results in miscarriage of justice.

4. Opposite Party No.2 filed the aforesaid complaint case against the petitioner and her husband, alleging therein that opposite party No.2 was a tenant in a shop of the petitioner since the year, 1999. On the persuasion of the petitioner, the complainant agreed to purchase the said shop and a written agreement to sale was entered into between the parties on total consideration of Rs.2,25,000/- (Rupees Two Lacs and Twenty Five Thousand). Out of the consideration money aforesaid, Rs.40,000/- (Rupees Forty Thousand) was paid through Bank Draft at the time of agreement and subsequently, Rs.10,000/- (Rupees Ten Thousand) and Rs.75,000/- (Rupees Seventy Five Thousand) was also paid till 10.02.2003, which would be evident from the endorsement on the agreement to sale brought on the record along with supplementary affidavit.

5. Submission of the learned counsel for the petitioner is that it is specifically mentioned as one of the condition in the agreement that "***petitioner (vendor) would***

execute absolute sale deed in favour of the (vendee) the complainant or in favour of any other person related to him within a period of six months since the date of agreement after receiving balance amount of Rs.1,85,000/- (Rupees One Lac and Eighty Five Thousand)". Submission is that Rs.1,00,000/- (Rupees One Lac) was still due and the period of six months has already elapsed. Hence, the agreement could not be executed. Thereafter, complainant filed a civil suit bearing Title Suit No.374 of 2010 before the court of learned Sub-Judge-1st, Patna for redressal of his grievance.

6. Contention is that the nature of dispute and the conduct of the parties, especially of the petitioner, does not show that the petitioner had any dishonest or fraudulent intention at any point of time. If, corporate tax was due on the shop that was payable either by the petitioner or in pursuance of agreement between the parties even by the complainant, after deducting the same from the consideration money. Further Contention is that each and every non-performance of contract would not attract the ingredients of Sections 415 or 405 of the Indian Penal Code, unless there is specific material to substantiate fraudulent or dishonest inducement by the petitioner. The allegation and conduct of the complainant in not making payment of due consideration money within agreed time and filing of civil suit does not make it to infer any fraudulent or dishonest inducement on the part of the petitioner. Since the complainant himself had not performed his part by non-payment of entire consideration money, hence, non-execution of sale deed would not be faulted only with the petitioner.

7. After going through the complaint petition, I find substance in the submission aforesaid. The conduct of the parties inasmuch as non-payment of entire consideration money by the complainant within time, as agreed between the parties makes out a case of reasonable justification on the part of the petitioner for non-execution of the sale deed. Therefore, apparently no case of dishonest or fraudulent inducement on the part of the petitioner is made out. Therefore, whole prosecution is abuse of process of the court and as such vitiated in law. Accordingly, the impugned order and the entire criminal subsequent proceedings stands ***set aside*** and this criminal revision stands ***allowed***.

(Birendra Kumar, J)

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