

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7252 of 2015

Arising Out of PS. Case No.-41 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Rajeshwar Prasad Singh @ Rajeshwar Prasad S/o Late Ramkrit Singh
 2. Surendra Kumar @ Tinku S/o Rajeshwar Prasad Singh @ Rajeshwar Prasad
Both Resident of Village Dhanraj Chapra, P.S. Bikram, District Patna A/P
Bhikha Chak, P.S. Gardani Bagh, District Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Ashok Kumar Singh S/o Shekhi Lal Singh R/o Village +P.S. Bihata, District
Patna A/P Abhiyanta Nagar, P.S. Rupashpur, District Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shyam Kumar Singh, Adv
For the Opposite Party/s : Mr.R.P.S.Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 18-10-2019

Heard learned counsel for the parties.

2. Petitioner has sought for quashment of order of cognizance dated 16.07.2013 passed in Complaint Case No.41(C)of 2013 whereby the court of learned Judicial Magistrate-1st Class, Danapur took cognizance for offences under Sections 417,504 and 403 of the Indian Penal Code.

3. The challenge is on the ground that the allegation discloses a case of purely civil dispute between the parties arising out of an agreement to sale. Hence, criminal prosecution is an abuse of the process of the Court.



4. There is no dispute that the parties had entered into an agreement to sale immovable property after negotiation. Plot No.1520 /5722 under Khata No.1084 area 2 katha in Mohalla-Digha, Town and District-Patna was subject matter of initial written agreement. Complainant claims that petitioners had agreed to sell the remaining 01 katha also after receiving Rs. Three Lacs more as valuation of the land was Rs. Three Lacs per Katha, however, the sale deed was not dishonestly executed rather the property was sold to some other person.

5. In the reply to the counter affidavit of opposite party No.2, the petitioner specifically admitted in para-6 of the reply dated 09.10.2018 as follows:

“That earlier agreement was made for 2 kathas of land but after that complainant /O.P.No.2, got information and approached the petitioners to give the adjacent one katha land along with 2 kathas of agreement land for which petitioners were ready than the O.P. No.2 have to be paid total Rs.9 Lacs as per (Rs. 3 Lacs per katha land) in which the O.P. No.2 have paid only Rs.7 Lacs in place of Rs.9 Lacs and wants to grab the entire 3 kathas land in Rs.7 lacs only due to



which the petitioners have not duly executed the land and neither cheated the opposite party”.

6. With the consent of parties, several adjournments were allowed to the petitioners for amicable settlement of dispute and finally by order dated 05.08.2019, this Court again allowed time to the petitioners to execute sale deed in favour of the complainant in respect of 2 kathas of land as per written agreement and the additional consideration money received from complainant for the remaining 1 katha be refunded to the complainant. If that course is not feasible, entire 3 katha be sold to the complainant/opposite party and the complainant shall pay the outstanding dues but the petitioner did not pay any heed. At the time when the petitioners were executing registered sale deed in favour of some other person in respect of the area of land which was subject matter of agreement with opposite party No.2, the petitioners had dishonest intention not to sale the land to opposite party No.2. Petitioners have admitted in para-6 of the reply that he had received Rs.Seven Lacs of consideration money but even till date the petitioners are not ready to refund the admitted consideration money.

7. The civil remedy is no bar for criminal prosecution, if prima facie case of dishonest intention at the inception of



agreement is made out. In this case, the petitioners were dishonest from the very beginning inasmuch as received consideration money from the complainant without any intention to execute the sale deed in favour of complainant and sold the same to some other person. Hence, this application has got no merit. Accordingly, it is dismissed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.10.2019
Transmission Date	24.10.2019

