

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15221 of 2015

Arising Out of PS. Case No.-1168 Year-2012 Thana- PATNA COMPLAINT CASE District-
Patna

-
1. Smt. Renu Sinha, wife of Sri Vinod Kumar Sinha
 2. Vinod Kumar Sinha, son of Late Ram Awtar Singh, Both residing at Shakti Kunj, Darbhanga Kothi, House No. 7, MF 5/1, Bahadurpur Housing Colony, P.S. - Agamkuan, Distt. - Patna
 3. Pramod Kumar Singh, son of Birendra Narayan Singh, resident of village - Ganoni, P.S. - Jamalpur, Distt. - Darbhanga at present resident of Shaktikunj, Darbhanga Kothi, House No. 7, MF 5/1, Bahadurpur Housing Colony, P.S. - Agamkuan, District - Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Haribansh Singh, Son of Sri Shiv Shankar Singh, resident of village + Post Office - Gehuni, P.S. - Bhagwanpur, District - Begusarai

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Singh, Advocate
		Mr. Ashok Kumar, Advocate
For the Opposite Party/s :		Mr. Shyam Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 10-07-2019

Heard learned counsel for the parties.

2. The petitioners are accused in Complaint Case No. 1168 of 2012, brought by opposite party no. 2 Haribansh Singh, wherein cognizance has been taken on 09.12.2014, for offences under Sections 420 and 406/34 of the Indian Penal Code, against the petitioners.

3. Petitioners have challenged the cognizance order on the ground that there is absolutely no disclosure of any dishonest or fraudulent intention on the part of the petitioners nor the



material available on the record, depicts a case of dishonest and fraudulent transaction at its inception. Hence, the criminal prosecution of the petitioners is abuse of the process of the Court.

4. Learned counsel for the complainant submits that the complaint petition would prima facie disclose commission of offence under Sections 420 and 406 of the Indian Penal Code.

5. I am, at this stage, of the opinion that the Court should not interfere with the discretion exercised by the Magistrate wherein only the petitioners have been summoned to face trial. At this stage proof beyond reasonable doubt is not to be looked into nor chances of conviction in the trial can be examined.

6. According to complaint petition, the complainant had sold Plot No. 62 under Khata No. 149 in village Bahadurpur, P.S. Bahadurpur, District Patna in favour of petitioner no. 1 Renu Sinha, wife of petitioner no. 2 Vinod Kumar Sinha. Petitioner No. 3 Pramod Kumar Singh is a witness on the said registered sale deed dated 28.08.2012 executed by the complainant as well as a relative of the complainant, namely, Fulmani Devi. In the complaint petition, the complainant has admitted that the complainant and co-seller had admitted execution of the sale deed before the Registrar, however, contended that entire consideration money was not paid and only false promise was made that the



remaining consideration money would be paid soon thereafter, though the same was never paid, as such, the complainant found himself to be cheated by the petitioners.

7. Contention of learned counsel for the petitioners is that a perusal of the registered sale deed available at Annexure-2 would reveal that the entire consideration money was received by the vendors before the execution of the registered sale deed. Moreover, after purchase, the petitioners got their name mutated in the government records without any protest from any quarter and original sale deed is also with the petitioners.

8. By supplementary affidavit, the petitioners have brought on record the statement of the bank account which would show that the consideration money was withdrawn from the respective accounts. The explanation for cash payment of such a huge consideration money is that the complainant was not ready to receive cheque of the consideration money.

9. On careful consideration of the material on the record, I find that no ingredient of offence of cheating is made out as there is apparently lack of material to substantiate dishonest and fraudulent intention of the petitioners at the time of entering into understanding between the parties for sale transaction.



10. Since there is no case of entrustment of money to the petitioners from the complainant, offence of misappropriation is also not made out, hence, the cognizance order suffers from non-application of judicial mind which would lead to miscarriage of justice, as such, requires to be quashed. Accordingly, the entire criminal prosecution against the petitioners including the impugned order is hereby quashed. This application stands allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	17.07.2019
Transmission Date	17.07.2019

