

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1337 of 2019

Arising Out of PS. Case No.-3268 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

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Sarita Devi, Wife of Sri Shiv Kumar Prasad, Resident of Chaili Tal,
Makhanpur, P.S.- Alamganj, District- Patna

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary Home , Bihar, Patna
2. Nagendra Kumar, Son of Late Damodar Prasad, Managing Partner of M/S A.V. SKYZ Developers, Having Registered Office at 213, Emarat Firdaus, Exhibition Road, P.S.- Gandhi Maidan, District- Patna, Resident of Flat No. 405/A, R.L. Vatika Apartment Salimpur Ahra, P.S.- Kadamkuan, District- Patna
3. Parmila Sinha, Wife of Vijay Kumar Sinha, Resident of Rajendra Path Gola Road, P.S.- Rupaspur, District-Patna. At present Flat No. 501 Kiran Kutumb Apartment in front of Sadigharana, Abhiyanta Nagar, Ranjan Path, P.S.- Danapur, District- Patna
4. Vijay Kumar Sinha, Son of Ram Chandra Sinha, Resident of Rajendra Path Gola Road, P.S.- Rupaspur, District- Patna. At present Flat No. 501 Kiran Kutumb Apartment in front of Sadigharana, Abhiyanta Nagar, Ranjan Path, P.S.- Danapur, District- Patna

... .. Respondents

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Appearance :

For the Petitioner : Mr. Shiva Shankar Prasad Singh, Advocate
For the Respondents-State: Mr. Sheo Shankar Prasad, SC-8

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 24-09-2019

This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 13.06.2019 passed by the learned Additional Sessions Judge-17th, Patna in Cr. Revision No.173 of 2019 whereby the revision application against the order dated 08.02.2019 passed by the learned Additional Chief Judicial



Magistrate-12th, Patna dismissing the complaint in exercise of powers conferred under Section 203 of the Code of Criminal Procedure (for short 'CrPC') has been upheld and the revision application has been dismissed.

2. Learned counsel for the petitioner submitted that the order impugned dated 13.06.2019 is bad in the eye of law as well as on facts. The revisional court failed to appreciate the allegations made in the complaint which were duly corroborated by the complainant and the witnesses examined in course of inquiry under Section 202 of the CrPC. It also failed to appreciate that the accused persons in order to cheat the petitioner had entered into a development agreement but failed to comply with the assurance given at the time of execution of the agreement. According to him, the learned Additional Chief Judicial Magistrate had grossly erred in law in dismissing the complaint in exercise of power conferred under Section 203 of the CrPC. Instead of setting aside the order passed by the court of magistrate, the revisional court also grossly erred in dismissing the revision application.

3. *Per contra*, learned counsel appearing for the State submitted that the instant application is barred by law. The writ petition filed by the petitioner is in the nature of second revision, which is barred under Section 397(3) of the CrPC. He contended



that from perusal of the complaint itself, it would transpire that there is neither any allegation of inducement nor any allegation of dishonest intention at the time of entering into the agreement. The complainant has herself stated in her complaint that it is a case of breach of agreement. He contended that in case of a simple breach of agreement, a criminal case can not be launched. The remedy available to the petitioner is under common civil law.

4. Advancing his submissions, he pleaded that none of the ingredients of the offences alleged was attracted in the case. As such, the learned Magistrate rightly dismissed the complaint exercising the powers under Section 203 of the CrPC. In absence of any material illegality or irregularity, the revisional court also dismissed the revision application. The order impugned is neither perverse nor without jurisdiction. In that view of the matter, apart from the application being barred in law, the same deserves to be dismissed on merits.

5. Having heard the parties and perused the materials on record, I find that the Complaint Case No.3268(C) of 2018 was filed by the petitioner against the respondent nos. 2 to 4 with an allegation that they have cheated the complainant. According to the complaint, the complainant was possessing 2,100 Sq.ft. land in Gola Road, Patna. Besides her, Neelam Devi, Jyotshna Devi and



Sunita Devi had also purchased adjoining plots in Gola Road, Patna by separate sale deeds. The petitioner and other land owners entered into a development agreement with the respondent nos. 2 to 4 on 24.08.2011 with respect to their land for construction of a multi-storied apartment. It was agreed between the petitioner and the accused persons that 50% of the constructed flats to be developed by the accused persons would be given to the petitioner and the other land owners in lieu of their land. Initially, the construction of the multi-storied apartment over the amalgamated land was limited to Ground + 3rd floors, but subsequently, 4th floor had also been sanctioned by the authority. It is the contention of the complainant that the complainant and other land owners were not given 50% share in the constructed area by the accused persons on 4th floor. The complainant has also alleged that the developer had not constructed the flats as per agreement and not completed the work of lift, boundary wall, grill, parking, water pipe, generator etc. In spite of complaint having been made, the developer did not complete the work and said that now they have no concern with the land and flat. On the basis of the aforesaid allegations, the complaint was filed alleging offences punishable under Sections 406, 420, 464, 468 and 471 of the Indian Penal Code (for short 'IPC').



6. The complainant was examined on solemn affirmation. In course of inquiry, apart from the complainant, five witnesses were also examined. However, after going through the allegations made in the complaint, the statement of the complainant on oath and the statements of the witnesses recorded under Section 202 of the CrPC, vide order dated 08.02.2019, the learned Additional Chief Judicial Magistrate dismissed the complaint in exercise of powers conferred under Section 203 of the CrPC. The learned Magistrate was of the opinion that the dispute is predominantly of a civil nature and the ingredients of the offences alleged are not attracted.

7. Being aggrieved by the order dated 08.02.2019 passed by the learned ACJM, the petitioner preferred revision application before the Court of Sessions vide Cr. Revision No.173 of 2019. The revisional court vide a reasoned order dated 13.06.2019 dismissed the revision application finding no material illegality or irregularity in the order impugned passed by the learned ACJM.

8. Section 464 of the IPC deals with making of a false document.

9. Section 468 of the IPC provides punishment for the offence of forgery for the purpose of cheating.



10. Section 471 of the IPC provides punishment for using as genuine a forged document or electronic record.

11. As far as the instant case is concerned, there is no allegation of either making of a false document or of forgery for the purpose of cheating or of using as genuine a forged document or electronic record.

12. In that view of the matter, from the complaint itself, it would be clear that no allegation has been made in respect of the offences alleged under Sections 464, 468 and 471 of the IPC in the complaint.

13. The other two offences alleged by the petitioner in the complaint are Sections 406 and 420 of the IPC.

14. Section 406 of the IPC provides punishment for criminal breach of trust. The offence criminal breach of trust is defined in Section 405 of the IPC

15. Section 420 of the IPC provides punishment for cheating and thereby dishonestly inducing the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security.

16. One of the most essential requirement for constituting an offence punishable under Sections 406 and 420 of



the IPC is existence of dishonest intention right from the beginning.

17. There is nothing in the complaint on the basis of which it can be said that there was dishonest intention of the accused persons since inception of the agreement. The complainant himself admits that he has got 50% share in the area. His only grievance is that subsequently when fourth floor was sanctioned, 50% of his share in the constructed area was not given to him.

18. Thus, one can easily infer from the complaint that there is no allegation of dishonest intention on the part of the petitioner in the instant case.

19. Having regard to the nature of the complaint, if the learned Magistrate came to the finding that the offence is predominantly of a civil nature and no case of criminal breach of trust or cheating is made out, no interference was warranted by the revisional court. Hence, the revisional court rightly dismissed the revision application preferred by the petitioner.

20. Having held so, I find substance in the submission of the learned counsel for the State that the instant application, though filed under Articles 227 and 227 of the Constitution of India, is in the nature of second revision, which is barred under Section 397(3) of the CrPC.



21. Keeping in mind the discussions made above, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.10.2019
Transmission Date	02.10.2019

