

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28970 of 2014

Arising Out of PS. Case No.-3053 Year-2010 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Md. Hafiz @ Md. Afiz son of Md. Ibrahim
 2. Shakila Bano @ Shakila Wife of Md. Hafiz @ Md. Afiz Both are residents of village - Isopur, P.S. Phulwari Sharif, District - Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nasrin Bano W/o Gulam Kadir Ansari Residence of Mohalla - Noon Ka Chauraha, Patna City, P.S. Khajekalan, District - Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Kamlesh Kumar Sharma, Advocate
For the State	:	Mr. Md. Arif, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 07-01-2019

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 the instant application is for quashing the
order dated 10.05.2011 passed by learned Judicial
Magistrate- 1st Class, Patna in Complaint Case No.
3053(C)/2010 by which cognizance has been taken
U/s 420 of the Indian Penal Code against the
petitioners.”*

3. The allegation against the petitioners is that for their
fifteen *dhurs* of land they had agreed to sell the same to the



opposite party no. 2 for Rs.1,45,000/- out of which Rs. 40,000/- was paid in cash but later on it is alleged that the petitioners changed their mind and despite repeated request to execute the sale deed have not done the same even though the opposite party no. 2 claims to be ready to give the remaining amount to them.

4. Learned counsel for the petitioners submitted that the very opening paragraph of the complaint would indicate that the matter is purely of a civil nature relating to a transaction of sale-purchase for monetary consideration. Learned counsel submitted that the parties are related to each other and even if it is accepted that some amount may have been taken, the only remedy to the opposite party no. 2 was to move before the civil court of competent jurisdiction, either for a direction to get the land transferred in her name or for return of money given and/or compensation/damage. It was submitted that besides there being no written proof of such transaction, even that fact had to be proved, in accordance with law by adducing evidence of witnesses on the point before the civil court of competent jurisdiction, but in any view of the matter criminal proceeding is an abuse of the process of the court.

5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that it is a normal course of conduct that no



written receipts are given for any agreement between parties who are related and that due to inflation in the price of the land the petitioners had changed their mind and did not want to sell the land to the opposite party no. 2. On a specific query of the Court as to how does refusal of sale of a piece of land becomes the subject matter for a criminal case when the only remedy is under the common civil law by moving before the civil court of competent jurisdiction, learned counsel for the opposite party no. 2 was not in a position to demonstrate any criminality involved in the issue except for a feeble attempt by submitting that right from the beginning there was an intention not to sell.

6. The Court finds the reason to be absolutely untenable from the facts apparent from the tenor of the complaint petition as well as otherwise.

7. 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. The parameters set for setting aside of criminal proceedings have been laid down in detail by the Hon'ble Supreme Court in paragraph no. 102 in the case of **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335**. The Court deems it relevant to quote the same which reads as under:



“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd inherently improbable on the basis of which no prudent person can ever reach a just



conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal drudge.”

8. The Court finds that the present case is covered under the 1st and 7th categories set out in paragraph no. 102 of the aforesaid judgment. Further, with regard to the growing trend to convert purely civil disputes into criminal cases, the Hon’ble Supreme Court in the case of **Indian Oil Corporation v. NEPC India Ltd.** reported as **(2006) 6 Supreme Court Cases 736** has held the following at paragraph no. 13.

“13..... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged....”

9. For the reasons aforesaid, the application is allowed. The entire criminal case arising out of Complaint Case No. 3053 (C) of 2010, including order dated 10.05.2011 taking cognizance



against the petitioners under Section 420 of the Indian Penal Code
stand quashed.

(Ahsanuddin Amanullah, J)

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