

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86355 of 2019

Arising Out of PS. Case No.-26178 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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Dr. Md. Kalim Khan, Son of - Late Abdul Samid Khan, Resident of Mohalla-
Pandriva (Bawlli) Near Masjid Chawk, P.S.- Hazipur, Town and District-
Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Shahzad Khan, S/o Late Abdul Samid Khan, R/o Flat No. 104
Gulmohar Apartment, South east Gandhi Maidan, District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raghwendra Sharan Pandey, Advocate
For the Opposite Party/s : Mr. Pradeep Narain Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 07-01-2020 This application has been filed for quashing the order

taking cognizance dated 28.10.2016 passed by the learned

A.C.J.M. IX, Patna in Complaint Case No. 26178/C/2014, by

which, after enquiry, finding a prima facie case under Section

406 of IPC, processes have been issued against the petitioner.

Case in short is that a complaint case has been filed

by the opposite party no.2 against the petitioner that he agreed

to sell 10 Dhurs of land at the rate of Rs.11 lakhs per Katha. He

has paid Rs. 5 lakhs in 2012 for purchase of the above land, but

after sometime, petitioner started demanding more money for

registration, he again paid Rs. 01 lakh through cheque in

November, 2013, but in spite of payment of the amount, he



failed to execute the sale deed.

It appears that after enquiry, finding a prima facie case under Section 406 of IPC against the petitioner, processes have been issued, against which, the present application has been filed.

Submission of learned counsel for the petitioner is that it is a family dispute. Petitioner happens to be the brother of the complainant and he has already returned the money. Moreover, in a title suit, there is an order restraining to sell the land, which will appear from Annexure-2 and as such, continuation of proceedings against the petitioner will be an abuse of the process of the court and it is an out and out of civil litigation.

Heard learned APP and perused the record.

From perusal of the record, it appears that there is averments in the complaint petition that petitioner has taken amount and has not executed the sale deed. So far order of restraining to sell the land is concerned, that has been passed in the year 2019 whereas the complaint case has been filed in 2014 and the order of issuing process has been passed in 2016.

Considering the submissions, made above, I am not inclined to interfere with the order taking cognizance against the



petitioner. However, if the petitioner is at liberty to raise his points at the time of framing of charge or at any appropriate stage, which will be considered by the learned trial court on the basis of the materials available on the record.

With the aforesaid, this application is dismissed.

(Vinod Kumar Sinha, J)

Sunil Shukla/-

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