

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10628 of 2021

Arising Out of PS. Case No.-49 Year-2019 Thana- KHAGAUL District- Patna

MUSARRAT JAHAN Wife of Md. Jamiluddin Resident of Village -
Kabirpura, P.O. - Dhanuki, P.S. - Barbiga, District - Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar
3. Anil Kumar Son of Naresh Rai Resident of Village - Jamaluddin Chak,
Khagaul, District - Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rakesh Kumar, Advocate

For the Opposite Party/s : Mr. Mukeshwar Dayal, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 07-07-2022 Heard learned counsel for the parties.

The present application has been filed for quashing of the order dated 20.08.2019 passed by the learned Additional Chief Judicial Magistrate-V, Danapur whereby cognizance under Sections 420, 406 and 120B of the Indian Penal Code has been taken in pursuance of the charge-sheet filed after investigation in connection with Khagaul P.S. Case No. 49 of 2019.

Learned counsel for the petitioner submits that the informant in order to settle civil dispute is taking recourse to criminal proceedings when the law is well settled that criminal proceedings cannot be resorted to settle the civil dispute.



The informant alleges that an agreement for sale at the residence of the informant was executed on 12.10.2015 to sell a piece of land to the informant by the petitioner and the other accused persons measuring 24 decimal, situated at Mauza Badi Khagaul, P.S. Khagaul, pertaining to Khata No. 17, Tauzi No. 5293, Plot No. 1513, Thana No. 49 @ Rs.4,00,000/- (four lakhs) per Katha against which the accused persons received Rs.4,51,000/- (four lakhs fifty-one thousand) as advance money and also agreed to execute the sale deed in favour of the informant within three months after receiving the total consideration amount. It is alleged that within three months, the informant asked the accused persons to take the left over amount and to execute the sale deed but they were applying delaying tactics, as such, the informant sent a legal notice to the accused persons in which the accused persons accepted about taking advance money but continued to adopt delaying tactics, thus, the informant became sure that Rs.4,51,000/- (four lakhs fifty-one thousand) will be siphoned off. Further, it is alleged that the petitioner and the accused persons were looking to sell their land to some other persons.

Learned counsel for the petitioner submits that from bare perusal of the allegation as alleged in the FIR, it would



manifest that in the nature of allegation, the dispute between the parties is completely civil in nature. It is next submitted that the allegation does not even remotely suggest that any criminal offence is made out. It is next submitted that it is not in dispute that an agreement for sale was executed between the informant and the petitioner, even advance money was taken but a condition was there in the agreement for sale that the sale deed would be executed only when the entire amount is paid. The informant though sent a legal notice but he himself was not willing to pay the entire amount or else he would have rushed before an appropriate forum for seeking redressal of his grievance but despite an agreement of sale executed in between the informant and the petitioner still the informant chose to file an FIR instead of a case under the Specific Relief Act, this in itself amply demonstrates that the case is nothing but a tactics applied by the informant to exert pressure for getting his money back which in terms of the agreement for sale is no more due to him.

Learned counsel next submits that informant is already availing his remedy of getting the money back by filing a money suit but at the same time is parallely proceeding against the petitioner by filing an FIR. Learned counsel, thus, submits



that as submitted aforesaid criminal proceedings should not be resorted to for settling dispute which is purely civil in nature.

Learned counsel for the informant and learned A.P.P. for the State opposed this application but are not in a position to rebut the submissions made by the learned counsel for the petitioner, rather learned counsel for the informant submits that in the event if the informant received his money which he had paid he will not pursue the case that in itself gives an impression that the present criminal proceeding is nothing but an abuse of the process of the law.

The Court concurs with the submissions made by the learned counsel for the petitioner, the order taking cognizance dated 20.08.2019 passed by the learned Additional Chief Judicial Magistrate-V, Danapur, Patna in connection with Khagaul P.S. Case No. 49 of 2019 is quashed and this application is allowed.

(Satyavrat Verma, J)

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