

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.348 of 2022

Arising Out of PS. Case No.-627 Year-2021 Thana- BHAGALPUR KOTWALI District-
Bhagalpur

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Ravi Prakash Sah @ Pappu Sah S/o Late Shaym Sunder Sah R/o village-
Jagdishpur, P.S.- Jagdishpur, District- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary Home Department, Patel Bhawan Bailey Road, Patna.
2. The Director General of Police, Bihar Patna.
3. The Superintendent of Police, Bhagalpur.
4. The Investigation Officer, (Kotwali) Tilakmanhji Police Station Bhagalpur.
5. Gautam Kumar S/o Abhay Kumar Yadav Resident of Nabab Bagh Colony, P.S.- Tilakmanjhi, Distt.- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Adv.
	:	Mr. Devi Das Srivastava, Adv.
For the State	:	Mr. Md. Nadim Seraj, Adv.
For the Res. No.5	:	Mr. Ajay Kumar Singh, Adv.
	:	Mr. Rohit Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 10-05-2023

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the respondent
No.5.

In the present writ petition, the matter was
adjourned on 18.04.2023 and 27.04.2023 so that a positive
solution may come out in this case by virtue of talk but
unfortunately it could not take place, therefore, today this Court
is deciding this case on merit. Pleadings are already completed



in this case.

The present Cr. Writ Petition has been filed for quashing of F.I.R. bearing Kotwali (Tilkamanjhi) P.S. Case No. 627 of 2021 dated 16.09.2021 lodged under Section 406, 420, 504, 506 of the Indian Penal Code.

Learned counsel for the petitioner submits that petitioner and respondent No.5 were entered into an agreement for sale which is annexed as Annexure-2 dated 15.03.2016 in Rs.28 lac per *bigha*. The area of the land was 35 ½ dec., in this regard Rs.5 lac has been paid as advance through RTGS to the petitioner by respondent No.5. He further submits that the agreement is valid for 6+1 months from the date of mutation. He also submits that petitioner is suffering from cancer and he was in urgent need of money but when the private respondents has not provided money to him then he sent legal notice on 05.03.2020 and 16.01.2021 to the respondent No.5 for returning the advance money. He submits that petitioner is still ready to return the advance money to respondent No.5. He also submits that the said agreement is of dated 15.03.2016 and according to him it was valid up to 16.10.2016 but respondent No.5 has filed the present criminal case on 16.09.2021 after lapse of about 5 years with allegation that the petitioner has neither provided



mutation paper due to which the registration of land could not took place and also made allegation that petitioner is selling the property at the hand of others which is not correct and still land is with the petitioner. Learned counsel submits that from the date of agreement, five years lapsed and filing the case after five years itself indicates that intention of respondent No.5 is not good. He submits that it is basically a case of specific performance of contract and under the Specific Relief Act there is a special provision that when a contract shall not be fulfilled within the period prescribed, then in that case the parties are free to exhaust the remedy by way of filing suit under the provisions of Specific Performance Act and in this view of the matter he submits that the present case is basically a time barred civil dispute which the respondent No.5 wants to revive by virtue of filing present criminal case with such delay.

On the other hand learned counsel for the respondent No.5 submits that it is true that respondent No.5 has given Rs.5 lac as advance. It is also true that agreement was executed on 15.03.2016, but it is false to state that the period of agreement was lapsed on 15.10.2016, according to him from the content of the deed, the said period of 6+1 months has to be counted from the date of mutation and according to him till date



no document for mutation has been prepared. He further submits that the intention of petitioner was bad since from the beginning, on no occasion he has intimated about the mutation and only due to inaction on their part this agreement for sale could not be acted upon. He also submits that respondent No.5 is ready to act upon the said part of performance mentioned in the agreement for sale. Learned counsel submits that actually there was two agreement for sale, respondent No.5 has made payment of Rs.1.55 crore to the petitioner in the year 2017 about which he has also provided receiving on the first agreement, therefore, the plea taken by the petitioner that respondent No.5 is not ready to pay money and extending time is not correct. He further submits that petitioner in the name of illness, intentionally extended time again and again, it is due to this reason such delay has caused and upon understanding later that the petitioner has committed criminal breach and having dishonest intention, respondent No.5 has filed the present criminal case which is sustainable in the eyes of law.

Learned counsel for the petitioner in response, submits that the mutation has already been taken place for the said land on 23.12.2021, in result, the period for execution of sale deed ought to be 7 months from the date of mutation order



i.e. up to 23.07.2022. He further submits that the intention of respondent No.5 is clear by this fact that F.I.R. has already been filed in the month of September, 2021.

Upon hearing the arguments and perusal of the documents there are certain facts which are admitted by both the parties. Petitioner and Respondent No.5 are well known to each other, they have entered into agreement on 15.03.2016, this agreement was valid for 7 months from the date of mutation which is 23.12.2021, as such, the agreement is valid up to 23.07.2022, F.I.R. has been filed in the months of September, 2021, Rs.5 lac as an advance for the land mentioned in the Annexure-2 has been paid through RTGS by respondent No.5 in the account of petitioner which has been accepted by him.

In this background and particularly after going through the contents of F.I.R., this Court is of the view that the actual remedy available to the respondent No.5 under law is filing of specific performance of contract and not to file the F.I.R. The dispute is absolutely civil in nature and special law has been made for the same.

In this view of the matter, the F.I.R. bearing Kotwali (Tilkamanjhi) P.S. Case No. 627 of 2021 dated 16.09.2021 lodged under Section 406, 420, 504, 506 of the



Indian Penal Code is hereby quashed.

After quashing of the F.I.R., this Court is very cautious about the factual matrix of this case that limitation is still continuing in favour of respondent No.5 and liberty is hereby granted to the respondent No.5 that he may sue against the petitioner in the suit for specific performance of contract either for agreement for sale or for the purpose of realizing the money with interest.

With this observation and liberty to the respondent No.5, the present Cr. Writ Petition stands allowed.

(Dr. Anshuman, J.)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

