

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23537 of 2019

Arising Out of PS. Case No.-63 Year-2014 Thana- KHAGARIA District- Khagaria

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PRAKASH JAMAIYAR S/o Late Jagdish Jamaiyar Resident of 57 MIG,
Kankarbagh Colony, Patna- 20, Address as disclosed M6/48, Rajendra Nagar
Near Moinul Haq Stadium, P.S.- Rajendra Nagar, Patna -16

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR Bihar
2. Nawal Kishore Yadav S/o Late Mahavir Yadav R/o village- Baluahi, P.S.-
Khagaria, District- Khagaria

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Pratap Singh Mr. Nagendra Upadhyay
For the Opposite Party/s	:	Mr. Uday Pratap Singh
For the Informant	:	Mr. Surendra Kr. Singh

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 13-04-2023 Heard the parties.

This application has been filed for quashing the order dated 08.02.2019 passed by Judicial Magistrate, 1st Class, Khagaria in G.R. No. 218 of 2014 arising out of Khagaria P.S. Case No. 63 of 2014 registered for the offence under Sections 406 and 420 of the Indian Penal Code.

“The prosecution story in short is that a complaint has been made by the informant Nawal Kishore Yadav before Nagar Thana Khagaria on 05.02.2014. According to Nawal Kishore, a written agreement of sale/purchase was prepared on 10.10.2013 on a non-judicial stamp with the petitioner with some terms and conditions and accepting the terms and conditions the informant (Nawal Kishore Yadav) agreed to buy



Two Bighas, Fourteen Katthas and Five Dhurs of land for which he have to pay Rs. 10,50,000/-. The informant paid a sum of Rs. 01 lac as a consideration amount to the petitioner and rest amount was to be paid before 25.11.2013. After this Informant informed the petitioner to come to Khagaria and the petitioner came to Khagaria on 19.11.2013 for the said purpose but the petitioner returned back to Patna on 20.11.2013 without taking the rest amount from the informant and without registering the land. After that informant made several phone calls followed by Vakalatan Notice but he got no reply from the petitioner and the money which he paid to the petitioner was also not returned to the informant.”

Learned counsel for the petitioner submits that no offence is made out in the facts of the case as initially an agreement was entered into between the parties and there was no intention to cheat in the matter. He has also relied upon a judgment of the Hon'ble Supreme Court in the case of ***Murari Lal Gupta Vs. Gopi Singh (2005) 13 SCC 699.***

Learned counsel for the petitioner further submits that a title suit between the parties is also pending for specific performance of contract and it is basically a civil dispute which is given a colour of criminal case.



Mr. Surendra Kumar Singh, learned counsel for the Opposite party No. 02 (informant) has submitted that the petitioner has cheated the informant and therefore he should face prosecution. He also submits that the stage of the case has changed as the charge has been framed and therefore this is not a fit case for quashing.

Learned counsel for the O.P. No. 02 further submits that the anticipatory bail of the petitioner was rejected earlier and this fact also dis-entitles the petitioner from any relief from this Court in this jurisdiction.

I have considered the submissions of the parties.

In the opinion of this Court, this case is squarely covered by the Judgment of Hon'ble Supreme Court in the case of ***Murari Lal Gupta Vs. Gopi Singh (Supra)***.

There is no bar in exercise of the power of quashing under Section 482 Cr.P.C. if no offence is made out against the petitioner and therefore if his anticipatory bail application has been dismissed still this application is maintainable.

So far as the argument of the learned counsel for the O.P. No. 02 with regard to the change of the stage is concerned the same is fit to be rejected in view of the law laid down by the Supreme Court in the case of ***Anand Kumar Mohatta Vs. State***



(Government of N.C.T. of Delhi) 2019 11 SCC 706 and in the case of ***M/s Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Ors. 1998 (5) SCC 749.***

In view of the aforesaid discussions, this application is allowed.

The prosecution of the petitioner in G.R. No. 218 of 2014 arising out of Khagaria P.S. Case No. 63 of 2014 is held to be illegal and accordingly, the entire proceedings of Khagaria P.S. Case No. 63 of 2014 including the order dated 08.02.2019 by which the discharge application of the petitioner has been rejected is hereby quashed.

(Sandeep Kumar, J)

Vikas/Shishir

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