

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26859 of 2018

Arising Out of PS. Case No.-231 Year-2017 Thana- PARBATTI District- Khagaria

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1. Santosh Kumar And Anr Son Of Sri Upendra Narayan Das,
2. Pinki Devi @ Pinku Devi, W/O. Ashutosh Kumar @ Sheru Singh, Both Are
Resident Of Village- Parbatta, P.S. Parbatta, District- Khagaria.
- Petitioner/s

Versus

1. State Of Bihar
2. Sakaldeo Singh, son of Late Ramarup Singh, resident of Village- Karana,
P.S.- Parbatta, District- Khagaria.
- Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anant Kumar-1, Advocate
For the Opposite Party/s : Mr.Sri Pranav Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 11-05-2023 Heard learned counsel for the petitioners and learned
APP for the State.

This application has been filed for quashing of order dated 27.01.2018 passed by learned A.C.J.M-1st, Khagaria in connection with Parbatta P.S. Case No. 231 of 2017/ G.R. No. 1974 of 2017 by which learned Magistrate has taken cognizance against the petitioners for the offences under Sections 406, 420, 34 of the Indian Penal Code.

As per the prosecution case, the petitioners have taken an amount of Rs. 13,39,000/- (Rupees Thirteen Lakhs Thirty Nine Thousand Only) from the complainant for executing a sale



deed for a piece of land. However, after expiry of the period of the said agreement, the petitioners have neither executed the Sale Deed nor returned the said amount.

It has been submitted by learned counsel for the petitioners that from reading of the F.I.R, no offence is made out against the petitioners. There is a civil dispute between the parties and the opposite party no. 2 had filed a Title Suit in which decree has been passed in favour of the opposite party no. 2.

Learned counsel for O.P. No. 2 does not dispute the fact about the Title Suit. He further submits that criminal offence is out against the petitioners.

I have heard the submissions of the parties.

I have gone through the allegations levelled against the petitioners in the F.I.R, it has been submitted that petitioners are not executing the sale deed though he had agreed earlier.

The Hon'ble Supreme Court in the case of ***Murari Lal Gupta Vs. Gopi Singh*** reported in ***(2005) 13 SCC 699*** has held as under:-

6. We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having taken into consideration all the material made available on record by the parties and after hearing the learned



counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent.

In view of the law laid down by the Hon'ble Supreme Court in case of ***Murari Lal Gupta Vs. Gopi Singh (supra)***, this application is allowed as no offence is made out against the petitioners. The impugned order dated 27.01.2018 passed by



learned A.C.J.M-1st, Khagaria in connection with Parbatta P.S.
Case No. 231 of 2017/ G.R. No. 1974 of 2017 is hereby quashed
in the interest of justice.

(Sandeep Kumar, J)

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