

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34964 of 2015

Arising Out of PS. Case No.-89 Year-2013 Thana- BIHTA District- Patna

Satendra Narayan Singh @ Satendra Singh son of Late Deo Nandan Singh
resident of village Rajpur, P.S. Bihta, District Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Shiv Kumar son of Late Ganesh Prasad Singh resident of 19, IAS Colony,
Kidwaipuri, P.S. Budha Colony, District Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mrs.Archana Shahi, Adv.
For the Opposite Party/s	:	Mr.A.L.Pandit, APP
For the informant	:	Mr. R.K.P. Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 23-02-2023 Heard Mrs. Archana Shahi, learned counsel for the

petitioner and Mr. R.K.P. Singh, learned counsel for the

informant as also learned APP for the State.

This is an application for quashing of the order dated
15.4.2015 passed by the Sub Divisional Judicial Magistrate,
Danapur in Bihta P.S. Case No. 89 of 2013 by which the
discharge petition of the petitioner has been rejected.

As per the prosecution story, the informant, Shiv
Kumar runs a company known as M/s. Agrani Infra Developer
Pvt. Ltd. whose work is in the property dealing. He negotiated
the sale of Khata no. 356, Plot No. 3965, Area 18.75 dec. with
this petitioner on which Power of Attorney executed by the land



owner, Nawal Thakur and others. He paid Rs. 1,01,000/- on 05.04.2011 and got executed agreement to sale in his favour. He further paid Rs. 3,00,000/- on 28.04.2011 with receipt on agreement.

It is further alleged that in May, 2011 demand was made and informant sent Rs. 4,00,000/- through Ravindra Kumar and Sri Niwas Sharma due to his personal difficulty. Petitioner intimated the informant about providing receipt later. Further, the land was to be purchased within two years after full payment. The petitioner did not turn up to receive rest consideration and for execution of deed of sale and sold the same to another person. Petitioner was not ready to talk and was threatening and abusing to the informant side.

Learned counsel for the petitioner submits that he being the attorney of the original land owner, Nawal Thakur received Rs. 1,01,000/- at the time of agreement to sell and further Rs. 3 lakh which are part of the record.

Further, as per the agreement, the sale deed was to be executed within a period of two years.

However, later despite several request as the land owner failed to turn up for making further payment and/or fixing date for execution, frustrated with the non-cooperation,



the land was sold to other person. The petitioner was entitled to Rs. 4,01,000/- and on default, there should have been a Civil Suit and certainly a case under Sections 406, 420 of the Indian Penal Code could not have been lodged and/or the learned Court should have proceeded further.

The specific averment in para-13 of the petition is that he was not the owner of the land and the attorney cannot be held responsible for the refund of the amount. The petitioner further has denied payment of Rs. 8 lakh and insisted that only 4,01,000/- was given to him for which document were signed.

Learned counsel for the petitioner, Mrs. Shahi lastly submits that a Title Suit vide Case No. 110 of 2014 has already been preferred by them and as such, the learned Court should not have rejected the discharge petition preferred which has been challenged in the present petition.

She has cited a case of **Murari Lal Gupta versus Gopi Singh** reported in **2005 (13) SCC 699** in support of her case that in such cases criminal cases are not made out.

Mr. R.K.P. Singh, learned counsel for the informant on the other hand straightaway took this Court to counter affidavit's page 9 and 10 (Annexure-A) which is the sale deed executed by the said attorney to show that he was the land



owner and not the attorney holder of the land and the statement made in the petition is false and as the same has been put on affidavit, he is liable for prosecution. It is his further submission that a bare perusal of the petition of the petitioner which has been annexed as Annexure-2 would show that the agreement between the parties, he clearly stated that the land belongs to him that the said contention that he was holding Power of Attorney is fit to be rejected.

His next submission is that as would reflect from the FIR itself, there was earlier transfer of land between the petitioner and the informant and as such trusting his word, beside Rs. 4,01,000/- which he claims to have been accepted another Rs. 4 lakh was given and as he had no time, the amount was sent and it was expected that he would subsequently put up signature in token of the said receipt. However, he chose to claim that the same amount was never received.

It is his last submission that the kind of allegation that has come in the FIR, certainly shows that the different sections that is part of the record of the IPC has rightly been made out against the petitioner, the police investigated the matter, charge-sheet submitted, cognizance taken, now he cannot turn around and say that the learned court erred in not granting him relief by



accepting his discharge petition.

Having gone through the rival submissions put forward by the respective parties and after going through the materials on record as also the contents of the FIR, it clearly shows that contrary to the agreement between the parties in which the petitioner had accepted the land to be his own and accordingly agreed to transfer the land to the informant, there is nothing on record to show that the informant failed to get the land executed and/or any information/notice sent to him to get the land executed failing which the petitioner will sell the land to some other person, a case is made out against the petitioner. In that background, the learned court rightly passed the order dated 15.4.2015 by which the petition preferred by the petitioner was rejected.

So far as the case cited by the petitioner i.e. **Murari Lal Gupta versus Gopi Singh** (supra) is concerned, each and every order is passed in the particular facts and circumstances.

In the said case, the Hon'ble Apex Court held that the amount of Rs. 4,50,000/- was to be paid to the land holder for execution of deed but after paying Rs. 3,50,000/-, although, he agreed to pay Rs. 1 lakh at the time of registration of sale deed and delivery of possession which he failed to do so, in that



backdrop, the learned court held that the criminal proceeding initiated by the respondent against the petitioner is wholly unwarranted.

However, in the present case, contrary to the case made out by the petitioner in the present petition that he was simply a attorney holder of the land, he had approached the informant and had claimed that he is the owner of the land. In that background, the criminal intent and also to cheat the informant from the beginning was/were there.

In that backdrop, the said citation put forward by the learned counsel for the petitioner do not come to his rescue.

The petition lacks merit and accordingly dismissed.

(Rajiv Roy, J)

Ajay Singh/-

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