

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55056 of 2022

Arising Out of PS. Case No.-111 Year-2022 Thana- PIRBAHOR District- Patna

1. JABA BASAK W/o Shri Shambhu Nath Basak Resident of Durukhi Lane, Police Station- Pirbahore, Town and District- Patna
2. Shambhu Nath Basak S/o Late Nitya Gopal Basak Resident of Durukhi Lane, P.S.- Pirbahore, Town and District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mrs. Urmila Devi W/o Late Mohan Lal Prasad Residing at Nau Lakha Kothi Bhanwar Pokhar Bagicha, P.S.- Pirbahore, District- Patna.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 54657 of 2022

Arising Out of PS. Case No.-111 Year-2022 Thana- PIRBAHOR District- Patna

PRERNA BASAK @ SWEETY BASAK Wife of Dineshwar Prasad Resident of Durukhi Lane, P.S.- Pirbahore, Town and District - Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mrs. Urmila Devi Wife of Late Mohan Lal Prasad Residing at Nau Lakha Kothi Bhanwar Pokhar Bagicha, P.S.- Pirbahore, District - Patna

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 55056 of 2022)

For the Petitioner/s	:	Mr.Ashok Kumar Mishra, Adv. Mr.Milind Kumar Mishra, Adv.
For the State	:	Mr.Bharat Bhushan, APP
For the O.P. No.2	:	Mr.Chakrapani, Adv. Mr.Sanjay Kumar Singh, Adv.

(In CRIMINAL MISCELLANEOUS No. 54657 of 2022)

Appearance :

For the Petitioner/s	:	Mr.Madhav Krishna, Advocate
For the State	:	Mr.Dashrath Mehta, APP
For the Informant	:	Mr.Sanjay Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN



CAV ORDER

8 25-07-2023 As both theses cases arises out of same P.S. Case No., they are being taken up and heard together and disposed of by this common order.

2. Heard learned counsel for the petitioners, learned counsel for the O.P. No.2 and learned APP for the State.

3. The petitioners apprehend their arrest in a case registered for the offence punishable u/s 420/506/34 of the IPC.

4. The prosecution case, in brief is that to purchase a house with vacant/parti land, there were negotiation between the informant's husband and son with Jaba Basak and her husband Shambhu Nath Basak for total consideration amount of Rs.72,00,000/- only. It is alleged that the property stands in the name of Jaba Basak. Earnest money/advance of Rs.51,00,000/- were given to Jaba Basak by cash and through bank in her bank account and the rest consideration amount was to be given at the time of execution of the registry and the period was taken for one month for registration. It is further alleged that the paper of agreement was sent on the mobile of the son of the informant for ten dhoors only and when the informant raised objection, then all the accused persons did



not agree to sell the property and started to evade. The informant has given Rs.51,00,000/- in presence of the younger brother of Shambhu Nath Basak namely Bhupen Basak @ Chunnu, Dipak Kumar, Sanjit Kumar and others. It is further alleged there is no intention of the accused persons to give the property to the informant and they are negotiating to sell the property to others and threatening the informant's side.

5. It is submitted by learned counsel for the petitioners that petitioners are quite innocent and have committed no offence. They have been implicated in this case to grab the property of the petitioner Jaba Basak and for wrongful gains. The petitioners have no concern with the occurrence from any corner and petitioners Jaba Basak and Shambhu Nath Basak are senior citizen of India. The informant and her sons want to grab the property of the petitioners and the story of execution of the alleged agreement for sale is a bull story and no agreement for sale has ever been executed by the petitioner Jaba Basak in favour of the informant. A complaint petition was filed on behalf of the petitioner Jaba Basak on 29.4.2019 which bears the Complaint Case No. 1692 (C) of 2019 Jaba Basak .. V/s ..



Navin Gupta and others and unfortunately due to unavoidable circumstances and after that due to Covid-19 Pandemic the enquiry witnesses could not be produced and the cognizance could not be taken. The same is pending before the learned court of J.M. 1st Class- XXII, Patna. The Eviction Suit have also been filed against the sons of the informant by the petitioner Jaba Basak bearing Eviction Suit Nos. 3 of 2021 Smt. Jaba Basak .. V/s .. Navin Gupta and 04 of 2021 Smt. Jaba Basak .. V/s .. Ritesh Ravi alias Ravi. The Eviction Suits are pending before the learned Court of Munsif- I, Patna. The informant appeared through her counsel during the hearing of Anticipatory Bail Application before the learned court of Sessions Judge, Patna but the sons of the informant did not appear in the Eviction Suit in-spite of full knowledge since the statements regarding the Eviction Suits were given in the bail application. By practicing fraud the amount of Rs. Five Lacs was sent in the Bank Account on 16.4.2019 and as the petitioner Shambhu Nath Basak got information, an application was given by him to the Manager PNB Bank- Muradpur, Patna on 17.4.2019 stating therein that “the transaction is neither expected by me in the said account nor the same has been initiated by me or in mutual interest by any



one in my family or anyone with an interest in personal, professional or casual affairs". It is submitted that an Informatory petition was also filed on 3.6.2021/14.6.2021 by the petitioner Jaba Basak stating therein the facts against the informant and her sons which bearing Informatory Petition No.1621 of 2021. It is further submitted that save and except Rs.5,00,000/- through NEET not a single Rupee was paid by the informant to the petitioners and their family members. The informant has not produced any chit of paper to show that any amount was received by the petitioners through cash. Even the date of giving the money through cash has not been mentioned in the F.I.R. Petitioner Jaba Basak had never executed any agreement for sale of her house in question, thus the so called *sada* unregistered *Baybeyana* annexed with the F.I.R. by the informant is a false and fabricated document. There is no signature of the petitioner Jaba Basak on the so called agreement for sale. Moreover, the informant has also not shown that on which date how much money was given to the petitioner Jaba Basak. From perusal of the F.I.R., it appears that one typed copy of the agreement is the part of the F.I.R. but the said agreement shows that none had made signature on the said agreement and in para no.3 of the



agreement, it is mentioned that it is valid till 30th October, 2018. The present F.I.R. was lodged on 28.02.2022 against the petitioners and their family members and much earlier to the present F.I.R. one complaint petition vide Complaint Case No.1692 of 2021 has been filed by the petitioner Jaba Basak on 16.04.2019 against the informant and her family members.

6. Learned APP for the State as well as learned counsel for the O.P. No.2 opposed the prayer for bail by submitting that the late husband of the informant and her sons were/are engaged in wholesale business of saree in the name and style of Naveen Textiles situated at Rajdhani Market, Patna and the informant is residing in the house of the petitioners with her family since long time. The petitioners were in need of money for the purpose of marriage of their daughter (petitioner in Cr. Misc. No.54657/2022). It is further stated that the petitioners requested the informant and her sons for selling off the front portion of the house along with certain structure and on the request made by the accused, the informant and her sons had agreed to purchase the property of the petitioners. It is further submitted that in the year 2015, the informant agreed to pay Rs. Seventy Two Lacs as consideration money for the property as agreed between the



parties and as per the assurance of the petitioners, the informant and her sons started making certain payments both in cash and kind from 2015 as per the request made by the petitioners. The entire payment amounting to a sum of Rupees Forty Six Lacs was paid by the informant and her sons to the petitioners in the presence of one brother of the petitioner Shambhu Nath Basak and also in the presence of some others which is evident from the handwritten papers (Annexure-B to reply to the counter-affidavit). In the supplementary counter-affidavit filed by the O.P. No.2, it is stated that as per the request made by the petitioners, the informant had paid the said amount in cash because the petitioners had to make payments for marriage of petitioner Prerna Basak. Apart from the cash, clothes and other items for marriage purpose were taken by the petitioners and the amount of articles have already been included in Rupees Forty Six Lacs. On 19/10/2019, petitioner Prerna Basak, who is a petitioner in Cr. Misc. No. 54657/2022, sent a WhatsApp message to the son of the informant stating that copy of the agreement is being sent to and requested the son of the informant to kindly go through the contents of the agreement. The said PDF was sent to the son of the informant (Annexure-A of the supplementary



counter-affidavit) and the same is also enclosed in the F.I.R. It is further submitted that from bare perusal of the WhatsApp chat in between petitioner Prerna Basak and the son of the informant, it is clear that the petitioners agreed to sell the property in question to the informant and part of the consideration amount were taken by the petitioners and Prerna Basak (the daughter of the petitioners of Cr. Misc. No.55056 of 2022) herself sent the PDF of agreement on WhatsApp accepting in no uncertain terms of accepting a sum of Rs. 42 lacs in between 31.08.2015 to 06.03.2018. During investigation, police has called for some document from the informant to show that the said payment was made to the petitioner. Two witnesses (Annexure-B to the supplementary counter-affidavit) stated before the police that in their presence, the said amount was given to the petitioners. The said affidavit is dated 24.03.2022. Learned counsel for the informant submits that the petitioners by their act are trying to usurp the hard earned money of the informant, who is a senior citizen and now the petitioners are in search of new buyer so that they can sell off the property at a higher rate.

7. Learned counsel for the informant submits that by the order dated 17.02.2023, the matter was referred to the



Mediation Center of the Hon'ble Patna High Court (on the request of the counsel for the petitioner) by this Court. A total four dates were fixed with a view to come on an amicable settlement between the parties. The informant, an old lady, aged about 74 years appeared on all the dates before the Mediation Center. None of the petitioner appeared before the learned Mediator and only son-in-law of the petitioners (husband of Perna Basak of Cr. Misc. No.54057 of 2022) appeared on 22.03.2023 and sought time. Learned counsel for the informant further submits that on 17.04.2023, this Hon'ble Court, at the request made by the counsel for the petitioner as well as in view of the report of the learned Mediator, granted yet another opportunity to the petitioners to settle the matter and the time was extended.

8. Learned counsel for the informant further submitted that on 17.05.2023, Perna Basak (daughter of the petitioners of Cr. Misc. No.55056 of 2022), who is accused in Cr. Misc. No.54657 of 2022 appeared before the learned Mediator with an application for extension of time, which bore forged signature of the petitioners. The matter was not settled by the Mediator.

9. After hearing the parties and on perusal of the



record, it is clear that no person has signed in the said WhatsApp agreement and there is no signature of the petitioners on the document regarding the money paid to the petitioner, only the witnesses have signed.

10. Considering this fact, there is a civil dispute/money transaction dispute between the parties and that there is no specific allegation against the petitioner Perna Basak to receive money from the informant, let the above named petitioners, be released on bail, in the event of their arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) each with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/Successor Court in connection with Pirbahore P.S. Case No.111 of 2022, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Anjani Kumar Sharan, J)

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