

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.150 of 2019

Arising Out of PS. Case No.-2186 Year-2018 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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1. Anuradha Mehta @ Anuradha Mundkar and Anr Balmiki Mundkur Resident of 36/201 Heritage City, Mehrauli Gurgaon Road, District - Gurgaon, 122002, Haryana
 2. Balmiki Mundkur Bal Krishna Bal Chandra Mundkur Resident of 36/201 Heritage City, Mehrauli Gurgaon Road, District - Gurgaon, 122002, Haryana

... .. Petitioner/s

Versus

1. The State of Bihar
2. MohammadAnjarul Hasan Mohammad Badrul Hasan Resident of jail Road, Chandwara, P.S.- Chandwara, District- Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs. Archana Sinha, Advocate Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Pandey, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

10 16-01-2024 Heard learned advocate for the petitioners and learned
Additional Public Prosecutor for the State.

2. The instant revision is directed against an order of cognizance of offence under Section 420, 468/34 of the Indian Penal Code and issuance of process against the petitioners/accused persons in Complaint Case No.2186 of 2018 vide order dated 24.08.2018 passed by the learned Judicial Magistrate, First Class, Muzaffarpur, on the basis of the complaint and initial examination of the complainant under Section 200 of the Cr.P.C. The said order is challenged in the instant revision.



3. At the outset, it is pertinent to mention the case of the complainant/opposite party no.2, it is stated by the complainant that accused no.3 was the Manager of accused no.1 and 2/petitioners, he approached the complainant that the petitioners were willing to sale a piece of land morefully described in the schedule of the petition of complaint (hereinafter described as a 'subject land'). Subsequently, accused no.3 who represented himself as the Manager of the petitioners seized to be the Manager as his power of attorney was cancelled. Further case of the complainant is that the complainant and the petitioners had a meeting at their residence he was asked to pay a sum of Rs.15/- lacs as consideration amount of the said land and the complainant paid an amount of Rs.10/- lacs towards the advance part consideration money to the petitioners and promised to repay the rest amount at the time of registration and execution of the sale deed. The accused No.1 assured the complainant to execute the sale deed within 90 days from the said agreement for sale. However, the accused persons failed to fulfill the promise within the agreed time inspite of repeated requests by the complainant, when the complainant could understand that the accused persons were not willing to transfer the land he demanded the said money from the accused



persons but they refused to repay the said money.

4. The above facts laid the complainant/opposite party no.2 to file a court complaint upon which impugned order of taking cognizance was passed.

5. It is submitted by the learned advocate for the petitioners that the petitioners executed a power of attorney in favour of one Syed Zahid Hussain on 28.08.2011. Subsequently, the said power of attorney was cancelled on 16.12.2013 even after cancellation of the said power of attorney the accused no.3 on the strength of canceled power of attorney executed a sale deed in favour of Bibi Sabina Khatoon on 27.11.2013, though the said deed was executed on 27.11.2013 it was placed before the registering authority in the year 2018.

6. It is contended on behalf of the accused persons that the deed of sale in respect of the subject land was executed by Zahid Hussain even after cancellation of power of attorney only to create a cloud over the land owned by the petitioners and to create a false claim over the said land by the complainant/opposite party no.2 through the said Zahid Hussain and Bibi Sabina Khatoon. The complainant also filed a purported agreement for sale, which is neither signed by the vendor or the vendee, therefore, the execution of agreement for sale is not



prove. Moreover, the said agreement for sale is not registered one, it is needless to say that when an agreement for sale in respect of immovable property is executed coupled with payment of part consideration money, such agreement is compulsorily registrable. The learned Magistrate specially relied on the said agreement for sale to come to a finding that the petitioners committed cheating in respect of a sum of Rs.10/- lacs which was allegedly paid by the petitioners. It is needless to say that from the materials available on record this Court does not find any cheat of paper being the receipt of the said sum of Rs.10,000/-.

7. It is contended by the learned advocate for the petitioners even assuming that there was an agreement for sale between the parties to transfer the subject land and the petitioners dishonored the said agreement for sale. The dispute between the parties does not amount to cheating. It is a case of violation of agreement for sale which is a essential a civil dispute and the aggrieved period is at liberty to file a suit for specific performance of contract. In support of his contention the learned advocate for the petitioner relies on a decision of the Hon'ble Supreme Court in the case of *Murari Lal Gupta Vs. Gopi Singh* reported in (2005) 13 SCC 699.



8. I have considered the entire facts and circumstances of the case, the allegation of violation of agreement for sale prima-facie does not amount to an offence of cheating, therefore, the petitioners is not liable to be prosecuted under Section 420 of the I.P.C. There is absolutely no allegation with regard to creation of false document against the accused persons which may be a ground to take cognizance by the learned Magistrate under Section 468 of the I.P.C.

9. For the reasons stated above, the criminal case being Complaint Case No.2186 of 2018 is liable to be quashed. The order of cognizance taken by the learned Magistrate in Complaint Case No.2186 of 2018 is bad in law and accordingly, set aside.

10. The instant revision application is allowed.

(Bibek Chaudhuri, J)

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