

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52302 of 2016

Arising Out of PS. Case No.-136 Year-2010 Thana- GAYA COMPLAINT CASE District-
Gaya

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Neelam Devi, W/o Late Jainath Prasad Singh, village- Chaugoan, Post-
Lound, P.S. Sirdala, District- Nawada

... .. Petitioner/s

Versus

1. State Of Bihar
2. Jairam Singh, Son of Late Visheshwar Singh, Mohalla- Ramna Town,
Gaya, P.O.- Head Post Office, Gaya, P.S. Civil Lines, District- Gaya.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Indradeo Prasad , Advocate Mr. Shiv Shankar, Advocate Mr. Vinod Kumar, Advocate Mr. Subodh Kumar, Advocate
For the State	:	Ms. Ansuiya Jaiswal, APP

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

7 26-11-2024 The instant criminal miscellaneous petition has been filed to set aside the cognizance order dated 04.12.2010 passed by the learned Judicial Magistrate 1st Class, Gaya, by which the cognizance of the offences under Sections 323, 341, 379, 406 and 504 of the Indian Penal Code (in short 'IPC') has been taken against the petitioner.

2. Learned counsel appearing for the petitioner submits that this case is completely of civil nature and O.P. No.2 by filing complaint has tried to give the colour of criminal wrong to the alleged non-execution of a Sale Deed.

3. Learned counsel has placed reliance upon the



judgment of the Hon'ble Apex Court passed in the case of ***Paramjeet Batra vs. State of Uttarakhand & Ors.*** reported in ***(2013) 1 BLJR 204*** and the relevant paragraph no.7 of the judgment upon which reliance has been placed is being reproduced as under:

“7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.

4. Learned counsel further submits that the complainant (O.P. No. 2) filed a Title Suit No. 16/16 for the alleged wrong which was rejected under Order VII Rule 11(d)



of the C.P.C.

5. Heard both the sides and perused the order impugned, complaint filed by the O.P. No. 2 and other relevant materials. The main ground taken by the petitioner to assail the order impugned is that from bare perusal of the complaint of which contents have been mentioned in the order impugned, no case for the offence of Section 406 of the IPC which is the major offence among the other alleged offences, is not even *prima-facie* made out and the allegations levelled in the complaint mainly attract a civil wrong and the matter relates to non- execution of a sale deed for transferring the particular land by this petitioner in favour of the complainant. In the light of this ground, I have perused the complaint as well as the order impugned and find substance in the said ground, as according to the main allegations, the complainant entered into an agreement with accused no.1 (petitioner) for the purchase of a particular land and in compliance with the terms of the agreement, the complainant paid Rs. 40,000/- as an earnest money (advance money) but thereafter, the petitioner did not execute the sale deed in favour of the complainant and thereafter, the complainant asked the petitioner to return the advance money which was refused by this petitioner. The said allegation mainly



attract a civil wrong and during the course of argument the learned APP has also accepted that the main allegations levelled in the complaint mainly relate to a civil wrong. It appears that the O.P. No. 2 has tried to settle her civil dispute by filing a criminal complaint. Learned trial court has not applied its judicial mind while taking the cognizance of the alleged offences and the said order was passed in haste manner and putting the petitioner to trial for the alleged offences will be completely abuse of the process of court, as such, this court finds substance in the above ground and set asides the order impugned and the instant petition stands allowed.

(Shailendra Singh, J)

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