

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33354 of 2023

Arising Out of PS. Case No.-251 Year-2021 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Vijay Kumar Son Of Late Satyendra Kumar Resident Of Village- Jagat Narayan Road, Opp. Patliputra Inter High School, Ps- Kadamkuan, Distt- Patna And Permanent R/O Village Tarwan, Po- Arap, Ps- Naubatpur, Distt- Patna
 2. Sanjay Kumar Son Of Late Satyendra Kumar Resident Of Village- Jagat Narayan Road, Opp. Patliputra Inter High School, Ps- Kadamkuan, Distt- Patna And Permanent R/O Village Tarwan, Po- Arap, Ps- Naubatpur, Distt- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dr. Brijesh Kumar Son Of Awadesh Prasad Sharma Resident Of Village- Jagat Narayan Road, Opp. Patliputra Inter High School, Ps- Kadamkuan, Distt- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Ser. Adv., Ms. Priyanka Singh, Adv., Mr. Adarsh Singh, Adv., Mr. Khalid Faizal, Adv.
For the State	:	Mrs. Asha Kumari, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 03-10-2024 The petitioners have approached this Court under Section 482 of the Cr.P.C., praying for quashing of the order of cognizance taken against the petitioners, by the learned ACJM-III, Danapur, in Complaint Case No. 251(C) of 2021, vide order dated 20th April, 2021.

2. Admitted fact as available from the complaint is that the petitioners and opposite party no. 2 have ancestral property, appertaining to Chuk Nos. 37 and 34, ad-measuring 95 decimals under Khata No. 35, situated at villaga Tarwan, P.S.-



Naubatpur in the District-Patna. The opposite party no. 2 wanted to develop the said land with a view to do some charitable and religious work in public interest. The distance between public road and the land is about 400 feet. Therefore, the complainant and the accused persons/petitioners had entered into an agreement on 25th May, 2017, whereby and whereunder the parties agreed to construct 14 feet wide road, starting from the land in question leading to public road. It is alleged that petitioner nos. 1 and 2 had been causing obstruction and hindrance in constructing the said road, on the ground that there were deviation from the original land etc. It is alleged by the complainant that the petitioners fraudulently and dishonestly induced the complainant to deliver the property unto them and thereby committed an offence of cheating.

3. The law is absolutely settled on the question of co-ownership and co-sharership of a piece of land, that possession of one co-sharer is deemed to be the possession of the other. Therefore, there cannot be any inducement or delivery of property in respect of the ancestral land, owned jointly by the petitioners and the opposite party no.2. Moreover, there is no allegation of criminal mis-appropriation. It is alleged by the complainant/opposite party no. 2 that the petitioners demanded



rangdari tax, which he was compelled to pay. There is no description of such payment of money by the opposite party no. 2, in favour of the petitioners, in the four corners of the complainant. Thus, the allegation under Section 406 of the I.P.C. regarding criminal mis-appropriation also does not exist.

4. Moreover, there is absolutely no allegation under Section 384 of the I.P.C.

5. The learned A.C.J.M.-III, Danapur failed to take into consideration that dispute between the parties arose, as a result alleged non performance of promise on the part of the petitioners, which rendered the terms of the agreement, executed by and between the parties a meaningless formality.

6. Considering such aspect of the matter, I do not find any material in the aforesaid criminal case for further proceeding and the impugned order dated 20th April, 2021, passed by the learned A.C.J.M.-III, Danapur, is quashed and set aside.

7. The instant Cr. Miscellaneous case is accordingly allowed.

(Bibek Chaudhuri, J)

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