

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40318 of 2019

Arising Out of PS. Case No.-881 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Mukesh Kumar, Son of Hanuman Prasad, Resident of Village - Gulmahiyachak, P.S.- Didarganj, District- Patna
 2. Raj Kumar @ Raj kumar ray, Son of Kalafdeo Rai, Resident of Village - Gulmahiyachak, P.S.- Didarganj, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Shakur Son of Late Md. Ishmail Resident of Village - Sadargali, Bangali Tola, P.S.- Khekallan, District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. S.K. Lal, Adv. Mr. Rudal Singh, Adv.
For the State	:	Mr. Harendra Prasad, APP
For the O.P. No. 2	:	Mr. Harish Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

8 27-11-2024 Heard Mr. S.K. Lal, learned counsel for the petitioners, Mr. Harendra Prasad, learned APP for the State and Mr. Harish Kumar, learned counsel for the O.P. No. 2.

2. The instant criminal miscellaneous application has been filed under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') for quashing the Complaint Case No. 881/2015 filed in respect of the offences punishable under sections 406, 420, 120B, 323, 379 and 504 of the Indian Penal Code (in short 'IPC') in which the petitioners have been summoned for the offence under section 406 of IPC.



3. Heard both the sides and perused the relevant materials. Learned senior counsel appearing for the petitioners has mainly taken the ground that the alleged offence under section 406 of the IPC of which cognizance has been taken by the learned trial court is not made out against the petitioners in view of the allegations made by the O.P. No. 2 in his complaint as the main ingredients of this offence do not attract in this matter and the instant matter relates to a civil wrong relating to violation of an agreement for sale and non-execution of sale deed.

4. To attract the offence punishable under section 406 of the IPC, it must be proved that one has been entrusted with a property and thereafter, such person has dishonestly misappropriated or converted the same for his own use. In the instant matter, it is an admitted position that an agreement for sale of a particular land was made by the petitioners with the O.P. No. 2 and as per the O.P., he initially gave six lakh rupees as a part of consideration amount to the petitioners regarding which *bayana* paper (agreement to sale) was also made but thereafter, the sale deed was not executed and the petitioners started demanding rupees three lakhs in addition to *bayana* amount in the name of a litigation which had been started



between the owner of the land and her sister and thereafter, the O.P. No. 2 paid three lakhs more money to the accused (petitioners) regarding which another *bayana* paper was made. But even then the sale deed was not executed in favour of the O.P. No. 2 regarding the agreed land. From these facts, one thing is quite clear that the petitioners had dishonest intention from the beginning of the alleged transaction to take wrongful gain and cause wrongful loss to the O.P. No. 2. Though the instant matter relates to non-performance of contract in respect of the transfer of a land through sale deed and due to missing of the main ingredient of section 405 of IPC, the alleged offence under section 406 of IPC may not attract in this matter but however, the offence of cheating can not be denied as there is sufficient material to show that the petitioners had dishonest intention from the very beginning of the alleged transaction and allegedly they got wrongful gain by taking much money from the O.P. No. 2 and caused wrongful loss to the O.P. by not transferring the agreed land. During the course of argument, the learned counsel appearing for the O.P. No. 2 has vehemently disputed the statement made by the petitioners in the paragraph No. 9 of the petition and the said statement is being reproduced as under :



“That the petitioners refunded Rs. 2 lakhs on 06.05.2016 to the complainant Md. Sakur Alam vide cheque No. 000029. The Said amount was received by the complainant Md. Sakur. Likewise the petitioners and co-accused Raj Kumar Rai also refunded Rs. 75,000/- to the complainant Md. Shakur on 30.09.2016 and Md. Shakur received Rs. 1,47,000/- from Suresh Rai on 06.10.2017.”

5. It is submitted by learned counsel appearing for the O.P. No. 2 that the above statement is completely wrong. When the learned counsel appearing for the petitioners is asked by this Court to explain his position with regard to the above situation then he simply stated that the statement made in the said paragraph may be treated as a wrong though he has focused on his ground as to not making out the offence under section 406 of the IPC but the learned counsel has not explained the above circumstance with regard to the false statement made in the paragraph No. 9 of the petition as alleged by the counsel of the O.P. No. 2 which shows that the petitioners have not come with clean hands before this Court. Further, in this petition, the



petitioners have prayed for quashing the Complaint Case No. 881/2015. Though as per the above mentioned ground taken by the petitioners, the offence under section 406 of the IPC is not made out, of which cognizance has been taken but even then the commission of the offence under section 420 of the IPC cannot be denied and a wrong judicial approach, while taking cognizance, can be rectified at the time of framing of charge, so, merely by this fact that the cognizance of a wrong offence has been taken, the entire criminal case should not be quashed, particularly, when an other offence, of which cognizance has not been taken, clearly attracts from the allegations. Accordingly, this Court finds no merit in this petition, so, it stands dismissed.

(Shailendra Singh, J)

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