

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45782 of 2023

Arising Out of PS. Case No.-906 Year-2021 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

=====

Hafiz Ansari S/O Late Nazir Ansari R/O Village- Naua, P.S- Dinara, Distt.-
Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ajijul Haque Ansari @ Ajijul Ansari S/O Late Nesar Ansari R/O Village-
Naua, P.S- Dinara, Distt. - Rohtas.

.. ... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Ajay Kumar Tiwari

For the Opposite Party/s : Mr.Mithlesh Kumar Khare

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

4 22-04-2024 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. This application has been filed for quashing the order dated 07.12.2022 passed by J.M. - 1st Class, Sasaram, Rohtas (hereinafter referred to as the 'Magistrate') in Complaint Case No. 906 of 2021 whereby learned Magistrate has taken cognizance against petitioners and others under Sections 406, 420 of the Indian Penal Code.

3. The prosecution case, as per complaint petition, in brief is that the petitioner had a land situated at village Nauwa, of 63.5 decimal, out of which, 30.25 decimals of land was already registered in the name of complainant and thereafter,



mutation was also done. It is further alleged by complainant that remaining 30.5 decimal land on a consideration money of Rs. 5000/- was also given by petitioner to the complainant for five years for cultivation purpose. It is next alleged that after negotiation, the petitioner agreed to transfer the said land to complainant at the consideration money of Rs. 14,000/-, whereupon the complainant paid rest money i.e. Rs. 9000/- to the petitioner as also Rs. 2000/- for mutation of the said land, but in the meantime, the petitioner got his name mutated of the aforesaid land. It is lastly alleged by the complainant that when he requested the petitioner to get the mutation of land in question in his favour, the petitioner became annoyed and assaulted him with fists & slaps and also snatched Rs. 2600/- from complainant's pocket and thereafter, this complaint petition has been filed.

4. Learned counsel for the petitioners submits that from bare perusal of the complaint petition, it is apparent that the main grievance of the complainant against this petitioner is that petitioner failed to ensure creation of Jamabandi in the name of complainant for a land, which belongs to complainant. In this connection, the complainant alleges that for creation of said Jamabandi, he paid Rs. 2000/- to the petitioner, even then



petitioner failed to do so and till date, Jamabandi was not created by the petitioner in the name of complainant. From the reading of prosecution case, it is apparent that complainant had entrusted the work to petitioner, for which, petitioner cannot be held guilty, since he is neither the employee of circle office nor any way connected with the circle office and as such, whole complaint case is false and concocted with an intention to mount pressure and harass the petitioner. As a matter of fact, the petitioner has never taken any money for the purpose of Jamabandi from the complainant. Besides this, the complainant has also lodged a title suit, vide Title Suit No. 812 of 2021 for declaration of title over the land in question. Learned counsel for the petitioner further submits that in support of the allegation made in the complaint petition, the complainant has not annexed or brought on record any chit of paper. In the complaint petition, the complainant has not disclosed any date and time or place where the complainant had paid the alleged money to the petitioner and in whose presence. In absence of same, continuation of the proceeding would be an abuse of the process of the Court. He lastly submits that this Court, including the Supreme Court, has repeatedly held that in matters relating to land and money dispute, being purely of civil nature, institution



of criminal case is an abuse of the process of the Court and as such, same is required to be quashed.

5. Learned A.P.P. for the State opposes the submission made on behalf of petitioner and submits that there are sufficient materials on record to take cognizance. At this stage, it cannot be said that no *prima facie* case is made out against this petitioner. There is no illegality or irregularity in the order of cognizance passed by the learned Magistrate.

6. Heard learned counsel for the parties and perused the materials available on record. From bare perusal of the complaint petition, it is apparent that the dispute is purely of a civil nature and no criminal offence is made out and the present case has been filed only with a view to put pressure on the petitioner. Moreover, the title suit in this regard is already pending before the Civil Court. It is settled law that mere breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings.

7. Considering the facts and circumstances, the order of cognizance dated 07.12.2022 passed by learned J.M. 1st



Class, Sasaram, Rohtas in Complaint Case No. 906 of 2021 is
hereby quashed and the present quashing petition is allowed.

(Prabhat Kumar Singh, J.)

anay

U		T	
---	--	---	--

