

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71360 of 2021

Arising Out of PS. Case No.-163 Year-2019 Thana- KARAI PARSURAI District- Nalanda

1. Upendra Prasad S/o Jugeshwar Prasad Resident of Village - Karai Parsurai, P.S. - Karai Parsurai, District - Nalanda.
2. Asarfi Devi Wife of Upendra Prasad Resident of Village - Karai Parsurai, P.S. - Karai Parsurai, District - Nalanda.
3. Chhote Prasad S/o Upendra Prasad Resident of Village - Karai Parsurai, P.S. - Karai Parsurai, District - Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Rinku Prasad @ Vijay Krishna S/o Sri Ram Swarup Prasad, R/o Village Diyawa, P.S. Karai Parsurai, District – Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Rudal Prasad
For the Opposite Party/s	:	Mr.Ram Bilash Roy Raman Mr.Ajay Mukherjee

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5 20-04-2024 Heard learned counsel for the petitioners, learned A.P.P. for the State and learned counsel for the opposite party no. 2.

2. This application has been filed for quashing the order dated 28.01.2021 passed by A.C.J.M. - 1, Hilsa (Nalanda) in Karai Parsurai P.S Case No. 163 of 2019 whereby learned Magistrate has taken cognizance against petitioners and others under Sections 504, 506, 420, 406, 120 (B) of the Indian Penal Code and directed the office to issue summons to the accused persons.



3. As per prosecution case, the informant paid full consideration money to the accused persons for the purpose of purchasing their land bearing Khata Nos. 235 and 236, Plot Nos. 914 and 915 having Area of 8.5 Decimal at the rate of Rupees 3,35,000/- (Rupees three lac thirty five thousand) per Katha and the land was under the cultivation of the informant and it is alleged that on 26.11.2019, the informant went to the house of the accused persons and asked them to register the land in question in his favour, the petitioner no. 1 Upendra Prasad became furious and denied to register the land in his favour. It is further alleged that co-accused Pintu Prasad attacked him with iron rod whereupon the informant started to flee away, but petitioner no. 3 Chhote Prasad pointed a pistol on his *Kanpatti* (behind the ear) and said that he would kill him if he asked them again to register the aforesaid land and in the meantime, petitioner no. 1 began to beat him with fists and slaps, but anyhow informant fled away from there and could save his life. Thus, the informant assumed that all the accused persons including petitioners, by hatching a criminal conspiracy, wanted to misappropriate the amount and are trying to sell the land in question to another person.

4. Learned counsel for the petitioners submits that



from bare perusal of the allegation, as alleged in the F.I.R., it would manifest that the dispute is purely of a civil nature, however colour of criminal offence has been given. Though, informant alleges that he paid full consideration money at the rate of Rs. 3,35,000/- per katha of land, but does not disclose as to how much amount was given to petitioners for purchasing the land. The F.I.R. is complete silent as to how much amount was given to petitioners and in whose presence. He next submits that informant himself has filed a title suit, vide Title Suit No. 11 of 2020, for the same land, which is pending in the court of learned Sub-Judge I, Hilsa (Nalanda). 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. For just decision in the matter, learned counsel for the petitioners has relied upon a recent decision of the Hon'ble Supreme Court in the case of *Kunti and Another vs. State of Uttar Pradesh*, reported in *(2023) 6 S.C.C. 109*.

5. Learned counsel appearing on behalf of opposite party no. 2 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 these petitioners. It is an admitted position that petitioners, after taking consideration money, did not execute sale-deed in favour of informant and as such, there is no illegality or irregularity in the order of cognizance passed by the learned Court below.

6. Heard learned counsel for the parties and perused the materials available on record. From perusal of the F.I.R., it is apparent that the dispute is purely of a civil nature. Petitioners allegedly entered into the agreement of sale a piece of land, but despite payment of certain amount, the sale-deed was not registered in favour of informant. 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 as well as law laid down by the Hon'ble Supreme Court (*supra*), the order of cognizance dated 28.01.2021 passed by learned A.C.J.M. - 1, Hilsa (Nalanda) in connection with Karai Parsurai P.S Case No. 163 of 2019, with respect to these petitioners, is hereby quashed



and the present petition is allowed.

8. It goes without saying that the parties shall be at liberty to pursue their remedy, as may be available to them, in accordance with law.

(Prabhat Kumar Singh, J)

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