

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42370 of 2015

Arising Out of PS. Case No.-9955 Year-2014 Thana- MADHUBANI COMPLAINT CASE
District- Madhubani

-
-
1. Rina Mishra, Wife of Dr. Rudra Nand Mishra
 2. Dr. Rudra Nand Mishra, Son of Late Vachaspati Mishra, Both Resident of Patliputra Medical College, P.S.- Saraidhela, District Dhanbad.

... .. Petitioner/s

Versus

1. State of Bihar
2. Manoj Kumar Jha, Son of Sri Ram Sunder Jha, Resident of Mohalla-Suratganj Ward No.17, P.S.- Town, District- Madhubani.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate Mr. Ravi Ranjan, Advocate
For the State	:	Mr. Suresh Prasad Singh, APP
For the O.P. No.2	:	Mr. Amalendu Shekhar Thakur, Advocate Mr. Ram Prawesh Kumar, Advocate Mr. Shivendu Harihar, Advocate

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 08-04-2025

Heard Mr. Ajay Kumar Thakur, learned counsel for the petitioners, Mr. Amalendu Shekhar Thakur, learned counsel for the O.P. No. 2 and Mr. Suresh Prasad Singh, learned APP for the State.

2. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') against the order dated 07.07.2015 passed by the court of learned



Chief Judicial Magistrate, Madhubani in Trial No. 1191/2015 arising out of Complaint Case No. 9955/2014/1516/2014 by which the learned Magistrate has formed the opinion that a *prima facie* case for the offence under Section 420 of the Indian Penal Code (in short 'IPC') is made out against the petitioners and accordingly, the learned Magistrate has directed the summons to be issued against the petitioners for the said offence.

3. Mr. Ajay Kumar Thakur, learned counsel appearing for the petitioners submits that no offence under Section 420 of the IPC is made out against the petitioners even if all the statements made in the complaint filed by the O.P. No. 2 are taken to be true as admittedly, the land and house mentioned in the complaint of O.P. No. 2, are an ancestral property of the petitioner no. 2 and the complainant (O.P. No. 2) is a relative of the petitioners. Admittedly, the O.P. No. 2 was residing in the house of the petitioners as a tenant during the relevant period and there was good relation in between them at that time and on several occasions, the O.P. advanced the money to the petitioner no. 2 but that amount was repaid to him and the repayment of Rs. 29,61,000/- (Rupees Twenty Nine Lakh and Sixty One Thousand) has been accepted by the complainant in his complaint. When the elder brother of petitioner no. 2 became very old and needed the



building rented to the O.P. No.2, the petitioners requested the complainant to vacate their house and only thereafter, with due deliberation O.P. No.2 lodged a false case by filing a complaint. It is further submitted that the allegations made by the O.P. No. 2 in his complaint mainly attract a civil wrong on the part of the petitioners if the complainant's story is believed and it is settled position of law that the breach of the terms of a contract will not constitute a criminal offence until and unless it is shown that the defaulter has an intention to cheat the other party from very inception of the transaction and in the present matter, the averments made in the complaint do not show any dishonest intention being on the part of the petitioners from the very beginning of the alleged transactions. In support of these submissions, learned counsel has placed reliance upon the following judgments of the Hon'ble Apex Court:-

(i) **Dalip Kaur and Others vs. Jagnar Singh and Another** reported in **(2009) 14 SCC 696** and the relevant paragraph no. 10 of this judgment upon which reliance has been placed is being reproduced as under:-

“10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat



him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])”

(ii) **Murari Lal Gupta vs. Gopi Singh** reported in **(2005) 13 SCC 699** and the relevant paragraph no. 6 of this judgment upon which reliance has been placed is being reproduced as under:-

“6. We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having taken into consideration all the material made available on record by the parties and after hearing the learned counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of



the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent.”

4. On the other hand, Mr. Amalendu Shekhar Thakur, learned counsel appearing for the O.P. No. 2 has vehemently opposed this petition and he submits that the alleged offence of cheating is clearly attracted against the petitioners as at various stages, the petitioner no. 2 accepted the *factum* of an agreement to sale an immovable property in question in favour of the O.P. No. 2 and it is also an admitted position that a sum of Rs. 29,61,000/- was transferred by the O.P. No. 2 in the account of the petitioner



no. 2, though, the said amount was later returned by the petitioners but the rest amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs) which had been given in cash by the O.P. No. 2 to the petitioner no. 2, was not returned back and thus the O.P. was cheated by the petitioners in the name of transferring their house and the petitioners had a dishonest intention to cheat the O.P. No. 2 from the very beginning.

5. Heard both the sides and perused the order impugned and the relevant materials. From the averments made by the O.P. No. 2 in his complaint, mere a civil wrong on the part of the petitioners may attract even if the entire story narrated by the O.P. No. 2 is believed to be true as the petitioner no. 2 and O.P. No. 2 are relatives and admittedly, during the relevant period, the O.P. No. 2 was residing in the house of the petitioner no. 2 as a tenant and as per the complaint, an agreement for sale of the house of the petitioner no. 2 in favour of the O.P. No.2 was made by both the sides and in this regard, a part of the fixed consideration amount, Rs. 29,61,000/- was also paid by the O.P. No. 2 to the petitioners but the same was admittedly repaid by the petitioners to the O.P. No. 2, so, these facts do not show a dishonest intention on the part of the petitioners from the beginning of the alleged transaction if the story of the O.P. No. 2 is believed. Furthermore, a Suit for



specific performance of contract has been filed by the O.P. No. 2 in relation to the alleged agreement which has been admitted by learned counsel appearing for the O.P. No.2 during the course of argument. This court is of the view that the criminal proceeding initiated by O.P. No. 2 by filing the complaint, is wholly unwarranted as it is not the case of the O.P. No. 2 that the petitioners do not have any title or right in the property in question or they were not competent to enter into an agreement for sale of the said property or could not have transferred the title in the said property to the O.P. No. 2, so, merely because the alleged agreement for sale did not result into transferring of the alleged property by way of sale, it cannot be said that the petitioners have cheated the O.P. No. 2, so, the offence under Section 420 of IPC does not even *prima facie* attract against the petitioners. As such, this Court finds substance in the aforesaid grounds taken by the petitioners and is of the view that the order impugned has been passed in mechanical manner by the learned Magistrate without applying his judicial mind and subjecting the petitioners to trial for the alleged offence will be complete harassment to them and also an abuse of the process of court, so, the order impugned as well as all the further proceedings, if any, having arisen against the petitioners in the



light of the order impugned passed in Complaint Case No. 9955/2014/1516/2014 are quashed.

6. In the result, the instant Criminal Miscellaneous Petition stands allowed.

(Shailendra Singh, J)

maynaz/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	16.04.2025
Transmission Date	16.04.2025

