

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23012 of 2016

Arising Out of PS. Case No.-773 Year-2011 Thana- PATNA COMPLAINT CASE District- Patna

1.

Baidy Nath Sharma, S/o - Late Jag Narayan Singh, resident of Village - Nima, P.S. - Dhanarua, District - Patna.
2.

Awadh Kishore Prasad Singh, S/o - Late Kamlesh Pati Singh, resident of village - Bhalua, P.S. - Barheriya, District - Siwan.

... .. Petitioner/s

Versus

1.

State Of Bihar
2.

Shyam Kishore Singh, Son of Late Ranglal Singh Resident of Village - Kurauni, P.O. - Katari, P.S. - Korma, District - Shekhpura at present resident of Anand Vihar Dakshini, R.M.S. Colony, Kankarbagh, P.S. - Kankarbagh, District - Patna.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 17147 of 2016

Arising Out of PS. Case No.-773 Year-2011 Thana- PATNA COMPLAINT CASE District- Patna

1.	Bijay Krishna Sharma, S/o- Late Jag Narayan Singh,
2.	Praveen Chandra, S/o – Vijay Krishna Sharma, Both 1 and 2 are resident of Boring Road, Pani Tanki, Quarter No. 2, P.S. -Sri. Krishnapuri, Dist. Patna
3.	Bijli Singh, S/o- Ramji Singh, Resident of Bank Mains Colony, House No. A/4, Chitragupta Nagar, P.S. - Patrakar Nagar (Kankarbagh), Dist- Patna.
4.	Rama Kant Singh, S/o – Parshuram Singh, Resident of Sri Rambali Mandal Chhoti Pahari, P.S. - Agamkuan, Dist.- Patna.

... .. Petitioner/s

Versus

1.	The State of Bihar
2.	Shyam Kishore Singh, S/o – Late Ranglal Singh, Resident of village- Kurauni, P.O- Katari, P.S.- Korma, Dist.- Shekhpura at present resident of Anand Vihar Dakshini, R.M.S. Colony, Kankarbagh, P.S. -Kankarbagh, Dist- Patna

... .. Opposite Party/s

Appearance :
(In CRIMINAL MISCELLANEOUS No. 23012 of 2016)
For the Petitioner/s : Mr. Krishna Kant Singh, Adv.
For the Opposite Party/s : Mr. Bharat Lal, APP



(In CRIMINAL MISCELLANEOUS No. 17147 of 2016)
For the Petitioner/s : Mr. Krishna Kant Singh, Adv.
For the Opposite Party/s : Mr. M. Dayal, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

17 04-02-2025 Heard Mr. Krishna Kant Singh, learned counsel appearing for the petitioners and Mr. Bharat Lal and Mr. M. Dayal, learned APPs appearing for the State.

2. Both the criminal miscellaneous petitions have been filed under section 482 of the Code of Criminal Procedure for quashing the order dated 09.02.2016 passed by the learned Judicial Magistrate, 1st class, Patna, in connection with Complaint Case No. 773(C) of 2011, whereby and whereunder the petitioners' prayer for discharge has been rejected.

3. At the outset, learned counsel appearing for the petitioners submits that the petitioner, namely, Baidy Nath Sharma in criminal miscellaneous No. 23012 of 2016 has died, so, the instant petition has become infructuous in respect of him, so, he wants to withdraw this petition to the extent of said petitioner.

4. Having considered the aforesaid submission, the instant petition, Cr. Misc. No. 23012 of 2016, stands dismissed in respect of petitioner Baidya Nath Sharma on account of the petition becoming infructuous to the extent of said petitioner.

5. Learned counsel for the petitioners submits that if



all the allegations levelled by O.P. No. 2, who is complainant before the trial court, in Complaint Case No. 773(C) of 2011 are taken to be true, no offence as alleged is make out against all the petitioners as the main grievances raised by the O.P. No. 2 in his complaint relates to non-mutation of the purchased land as well as demarcation of it and as per his case, the O.P. No. 2 purchased the land in question from Ganesh Dutt Sahkari Grih Nirman Samiti Limited and at that time, the complainant was one of the members and in this regard, Annexure- '2' showing the society's proceeding is relevant and further, the O.P. No. 2 filed a case bearing CWJC No. 7431 of 2010 raising the issue of mutation but fairly accepted that he had got possession over the purchased land and had been keeping the possession since 1992 and in this regard, paragraph No. '6' of the petition of the said case is relevant and its copy has been filed with this petition as Annexure- '3'. It is further submitted that the O.P. No. 2 earlier appeared in this matter through his respective counsel who is no more and thereafter, the notices were again sent to him but despite the notices having been validly served upon him, he has chosen not to appear in this matter. He further submits that in the guise of criminal complaint, the O.P. No. 2 has tried to settle his civil issues relating to the non-mutation and demarcation of



the land which has been admittedly purchased by him.

6. Though, learned APP appearing for the State has opposed the prayer of the petitioners but fairly accepted that in view of the averments made by the O.P. No. 2 in his complaint, the main issues raised by him relate to non-mutation and non-demarcation of the land purchased by him from the concerned society.

7. Heard both the sides and perused the order impugned. The petitioners made a prayer before the trial court for discharging them from the alleged offences and while dismissing their petitions, learned trial court observed that there were sufficient materials to frame the charges upon them. But from the allegations levelled by the O.P. No. 2 in his complaint as discussed above, neither an offence of cheating nor an offence of criminal breach of trust attracts even *prima facie* in this matter against the petitioners and the O.P. No. 2 has tried to settle his civil issues against the petitioners by filing a criminal complaint which is not permissible in the eye of law and there is no even *prima facie* material to frame the charges for the alleged offences upon the petitioners and subjecting the petitioners to trial for the alleged offences will be completely abuse of the process of court. Considering these aspects, the order impugned



is hereby set aside and the petitioners are discharged from all the allegations as well as alleged offences and the instant petitions stand allowed.

(Shailendra Singh, J)

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