

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72304 of 2019

Arising Out of PS. Case No.-814 Year-2019 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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Nand Kumar Singh Son Of Late Vishwanath Singh Resident Of Village -
Khurnu, P.S.- Agarar, District- Rohtas, At Present Ward No. 34, Mohalla -
New Area Gayatri Mandir, P.S.- Sasaram, District- Rohtas

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Binay Kumar Son Of Bishwanath Singh Resident Of Village - Nahauna,
P.S.- Sasaram Muffasil, District- Rohtas, At Present Mohalla - Kailash
Nagar, Sararam, Gali No. 1, P.S.- Sasaram Town, District- Rohtas

... .. Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr. Jitendra Prasad Singh
For the Opposite Party/s :	Mr. Jharkhandi Upadhyay
	Mr. Rahul Rathour

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 27-01-2026 Heard the learned counsel for the petitioner, learned
APP for the State and the learned counsel for the O.P. No. 2.

2. This application has been filed for quashing the
order dated 19.9.2019 passed by the learned Additional Chief
Judicial Magistrate, Sasaram in Complaint Case No.814 of 2019
by which cognizance has been taken against the petitioner under
Sections 406, 420, 504 of the Indian Penal Code and summons
have been issued.

3. The brief facts of the case are that the Opposite
Party No. 2 filed a complaint, bearing Complaint Case No. 814
of 2019, on 19.08.2019 before the learned Chief Judicial



Magistrate, Rohtas, alleging that on 15.01.2015, the petitioner came to his residence and expressed his willingness to sell the land situated at Mauza Dilia, within Sasaram Municipality. The petitioner allegedly stated that he was in urgent need of money for the education of his son. Pursuant to a mutual settlement between the parties, the price of the land was agreed upon at Rs. 16,43,000/-. It is further alleged that the complainant paid Rs. 4 Lakhs to the petitioner on 20.01.2015 in the presence of witnesses. Subsequently, the complainant issued two cheques, each for Rs. 4 Lakhs, in favor of the petitioner. The complainant claims that one of the cheques was encashed by the petitioner, but the payment of the second cheque was stopped by the complainant when the petitioner failed to execute the sale deed as agreed. However, it is alleged that the complainant subsequently paid the entire amount of Rs. 16,43,000/- in full, in the presence of witnesses, but the petitioner has failed to execute the sale deed in favor of the complainant, despite the full payment being made. The complainant further alleges that when a request was made to the petitioner for the execution of the sale deed, the petitioner allegedly threatened the complainant with dire consequences if any legal action was taken or a case was filed.



4. The learned counsel for the petitioner submits that after filing of complaint, the statement of the complainant was recorded and two enquiry witnesses have been produced by him in support of his case. The learned Magistrate after enquiry took cognizance of the offence under section 406, 420 and 504 of the I.P.C. against the petitioner vide his impugned order dated 19.9.2019 and summons have been issued against the petitioner. He further submits that from perusal of the complaint and statement of the witnesses produced during the course of enquiry it appears that present dispute relates to execution of sale deed with respect to land in question on the basis of agreement between the parties for which the complainant has legal remedy to file a title suit before the competent civil court for specific performance of contract.

5. The learned counsel for the petitioner further submits that in view of the fact that matter relates to civil dispute for execution of sale deed, no offence is made out under section 406, 420 and 504 of the I.P.C. therefore order taking cognizance as well as entire prosecution against the petitioner is an abuse of the process of law. He further submits that prior to the present prosecution, petitioner has already filed a complaint case no.37 of 2019 against the complainant (opposite party



no.2) on 5.1.2019 in the court of learned Chief Judicial Magistrate, Sasaram for dishonor of cheque as well as other illegal act of the opposite party no.2 in which cognizance has been taken vide order dated 24.5.2019 under section 138 of the Negotiable Instrument Act.

6. The learned counsel for the petitioner further submits that in the complaint case filed by the present petitioner cognizance has been taken on 24.5.2019 and at present case is pending in the court of learned Additional Chief Judicial Magistrate-VI, at Sasaram in which opposite party no.2 has been granted bail on 31.7.2019 thereafter present complaint has been filed against the petitioner on 19.8.2019. He further submits that in view of the aforesaid fact and circumstances, it is crystal clear that present prosecution has been filed with malafide intention in order to harass and humiliate the petitioner. It has been filed in order to grab the money of the petitioner and to put pressure upon him to execute the sale deed in favour of complainant without payment of full and final consideration money.

7. The learned counsel for the State and the learned counsel for the O.P. No. 2 have opposed the prayer of the petitioner.



8. I have considered the submissions of the parties and perused the materials on record.

9. It would be apposite to refer to a judgment of the Hon'ble Three Judge Bench of the Hon'ble Supreme Court in the case of ***Murari Lal Gupta Vs. Gopi Singh [(2005) 13 SCC 699]***, wherein the Hon'ble Court had held as under:-

*“...Having taken into consideration all the materials 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. ...**”*

10. Having regard to the facts and circumstances of the present case and taking into consideration the ratio laid down by the Supreme Court in the decisions quoted herein-



above, in my opinion, it is a case of pure and simple breach of contract and the dispute is essentially a civil dispute and the criminal complaint is, therefore, bad in law. From the perusal of the records, it appears that the present prosecution has been filed with mala fide intention only to wreak vengeance. The present prosecution is nothing but a counter blast to the complaint case filed by the petitioner against the O.P. No. 2 in which cognizance was taken under Section 138 of the NI Act.

11. Accordingly, the order dated 19.9.2019 passed by the learned Additional Chief Judicial Magistrate, Sasaram in Complaint Case No.814 of 2019 is hereby quashed.

12. In view of the aforesaid, the application stands allowed.

(Sandeep Kumar, J)

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