

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18063 of 2014

Arising Out of PS.Case No. -316 Year- 2013 Thana -BARH District- PATNA

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1. Md. Jamaluddin, s/o late Md. Nasiruddin,
 2. Javed Jamal @ Md. Javed Jamal, s/o Md. Jamaluddin, resident of Darussalan, Court Area, P.S.-Barh, District-Patna.
 3. Md. Aziz Ahmad, s/o Md. Salman, resident of Nasir Nagar Colony, Court Area, P.S.-Barh, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Mahfooz Alam, son of Md. Nabi Alam, resident of village-Bazidpur, P.S.-Barh, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mohammad Sufiyan, Advocate
Mr. Thakur Brajesh Singh, Advocate
For the Opposite Party/s : Mr. Akbar Ali, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 31-10-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 21.03.2014 passed by the Additional Chief Judicial Magistrate, Barh, Patna, in Barh P.S. Case No.316 of 2013 by which learned Magistrate has taken cognizance against the Petitioners for the offence under Section(s) 406, 420 Indian Penal Code.

2. Case of the prosecution is that Informant had entered into contract with Petitioner No.1 to purchase 1000 sft. of land for consideration money of Rs.85,000/- and for that purpose he had deposited aforesaid amount in the account of Petitioner No.1, Md. Jamaluddin, on 29.05.2013, in Allahabad Bank, Barh Branch,



vide cheque no.93468. The Petitioner No.1 promised to register the document in his favour on his return from Australia and also gave possession of the land, in question, i.e. plot no.4 of Nasir Nagar Colony situated in Court Area, Barh, and permitted him to make construction thereon. Thereafter, the informant allegedly invested Rs.1,75,000/- for making construction up to Plinth level. Petitioner No.1 wrote letter to his son i.e. Petitioner No.2, Javed Jamal, in which Petitioner No.1 admitted that Rs.85,000/- has been deposited in his favour in his SBI Account. He also informed in that letter about the land i.e. Plot No.4 in Nasir Nagar residential colony and that request was made in 1999. He mentioned in the letter that he is writing it for memory and reference and registry has to be done on his return from abroad. It is further alleged that the Informant approached Petitioner No.1 and 2 for execution of sale deed on return from abroad, but they did not pay any heed. It is further alleged that the Informant learnt that in the meantime, Petitioner No.3, Md. Aziz Ahmad, resident of Nasir Nagar Colony and relative of Petitioner Nos.1 and 2 was asking them not to transfer the land in favour of the Informant although he was a witness in the talk of sale and the entire transaction. In this way, petitioners have committed criminal breach of trust and have cheated the Complainant of Rs.85,000/- and also threatened him of dire consequences.

3. Counsel for the petitioners has submitted that



allegation of making payment by the Complainant is against Petitioner No.1. Petitioner No.1 has died on 30.01.2017, which has been mentioned in para 2 of the Supplementary Affidavit.

4. Counsel for the petitioners has submitted there is no intention of cheating the Complainant on the part of the accused persons. Petitioner No.1 during his life time has deposited the amount alleged to have been received by him from Complainant in the account of the Complainant-Opposite Party No.2 on 06.11.2012 in Allahabad Bank. Information of aforesaid deposit was given to the Branch Manager, Allahabad Bank, on 08.01.2013. The Informant has filed instant case before the police on 22.10.2013 after receiving the aforesaid amount by concealing real facts. The police did not verify all these facts during investigation and filed charge-sheet.

5. Counsel for the petitioner has relied upon judgment of the Hon'ble Supreme Court in the case of *Murari Lal Gupta Vs. Gopi Singh* reported in (2006) 2 SCC (Cri) 430 and judgment of our own High Court reported in the case of *Annu Sinha vs. State of Bihar* reported in 2016 (3) PLJR 949 in support of his submission, wherein, the Hon'ble Court have held that where there is dispute with regard to simple breach of trust, ingredients of Sections 406 and 420 Indian Penal Code will not be applicable.

6. Learned counsel for the State has appeared and



submitted that the learned Magistrate on the basis of charge-sheet has taken cognizance in the case.

7. From perusal of the allegation in the written report, this Court finds that the Informant has made allegation that the petitioners have committed criminal breach of trust and have cheated Rs.85,000/- and have also threatened him of dire consequences.

8. The Informant has alleged in the written report that he has entered into agreement with Petitioner No.1 (since died on 30.01.2017 as per Supplementary Affidavit filed by the petitioners) for purchase of land, as mentioned in the written report, and he also made payment of Rs.85,000/- through cheque. Registry of the aforesaid land was not done. It is alleged that on the advice of Petitioner No.3, Petitioner No.1 did not execute the sale deed. Allegation against Petitioner No.2 is that Petitioner No.1, who is his father, had informed him about such deal.

9. Counsel for the petitioners has drawn attention of this Court to Annexure-3 and 3/1 of the Supplementary Affidavit whereby Rs.85,000/-, which is alleged to have been paid by the Informant to the Petitioner No.1, as per agreement, for the sale of the land, has been deposited in Savings Account of the Informant bearing no.194872 on 06.11.2012. Information of the aforesaid deposit was also given to the Branch Manager, Allahabad Bank on



08.01.2013. Copy of the receipt showing deposit of the aforesaid amount and the letter sent to the Branch Manager, Allahabad Bank, have been annexed as Annexure-3 and 3/1.

10. The Informant after depositing the aforesaid amount by the Petitioner No.1 in his account on 06.11.2012 has filed instant case on 22.10.2013.

11. It appears that the police during investigation did not enquire this fact and has submitted charge-sheet in the case. From perusal of the written report, it further appears that the Informant has not brought on record any chit of paper to show that any agreement was entered into between the parties. The Informant has merely alleged that he has given Rs.85,000/- by cheque to Petitioner No.1 after entering into agreement.

12. In a decision reported in **2016 (3) PLJR 949 (Annu Sinha vs. State of Bihar)**, the Hon'ble Court has held that *“no written document to show that the petitioners even entered into an agreement to sell in favour of the Complainant or received any amount from the Complainant in this regard. It is a case of an oral agreement to sell. It is not the case of the Complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor it is his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention*



thereof by any person or to intentionally induce him to do or omit if he were not so deceived. At best, it is a pure and simple case of oral breach of contract which would not attract the ingredients of the offence under Section 406 or 420 IPC”.

13. In terms of Annexure-3 and 3/1 of the Supplementary Affidavit, Rs.85,000/-, which is alleged to have been given by the Informant to the Petitioner No.1, has already been returned to the Informant in his Savings Account on 06.11.2012 during life time of Petitioner No.1.

14. Therefore, this Court does not find that there was any intention on the part of all these Petitioners to commit cheating and criminal breach of trust with the Informant.

15. In view of such, impugned order dated 21.03.2014 passed by the Additional Chief Judicial Magistrate, Barh, Patna, in Barh P.S. Case No.316 of 2013 along with entire criminal proceeding against the petitioners is hereby quashed.

16. The application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	13-11-2017
Transmission Date	13-11-2017

