

(2010) 04 PAT CK 0135

In the Patna High Court

Chandeshwar Singh @ Chandeshwar Singh @ Jasso Singh	APPELLANT
Vs	
The State of Bihar and Dr. Dinesh Kumar Mahto	RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420, 465, 468

Citation : (2010) 04 PAT CK 0135

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—Heard learned Counsel for the petitioner, the Opposite Party No. 2 and the A.P.P. appearing on behalf of the State.

2. This application has been filed challenging the orders dated 05.09.2007 passed in L.N.M.U. Police Station Case No. 17 of 2007 (Trial No. 2882 of 2007) by which the Chief Judicial Magistrate, Darbhanga has taken cognizance for the offences under Sections 406 and 420 of the Indian Penal Code.

3. The facts of the case are that the petitioner agreed to sell a piece of land situated in village Simra, Anchal Bahadurpur measuring 11 Bighas 16 Kathas and 3 dhurs on payment of a consideration amount of Rs. 4,09,000/-. It is alleged by the informant that Rs. 1,50,000/- was paid as earnest money and a MAHADANAMA was executed on 22.12.2005 granting 11 months" time for payment of the rest amount before the sale deed would be executed. The informant claims that the petitioner despite legal notices refused to execute the sale deed although the informant had sent notices on 14.07.2006, 08.09.2006 and 09.11.2006. Being aggrieved by these facts, the present case was instituted. On investigation, the final report was submitted finding that the case is of a civil nature.

4. It is accepted and admitted by both the parties that the Opposite Party No. 2 has taken recourse to the legal remedy provided under the Civil law and filed a

suit for specific performance of contract on 22.11.2006 numbered as Title Suit No. 160 of 2006.

5. In the circumstances, Counsel for the petitioner submits that the case is purely of a civil nature and criminal proceeding is not warranted where there is specific remedy provided under the Civil law.

6. Counsel for the Opposite Party No. 2, on the other hand, submits that despite notices, the petitioner refused to execute the sale deed which indicates his intention not to sell.

7. Considering the arguments made on behalf of both the parties, this Court cannot hold that the criminal proceedings are warranted in view of the fact that there is an Act which provide remedy in such cases. The Specific Performance of Contract Act is an act which provides that if a person fails to fulfill and execute the conditions of the agreement between the parties, he would be entitled to file a suit under the Specific Performance of Contract Act. The Opposite Party No. 2 has utilized this remedy and the petitioner would be entitled to raise whatever defence he wishes to in his favour. Therefore, the acts of this nature, the criminal proceeding is completely unwarranted.

8. Counsel for the Opposite Party No. 2 refers to a decision of the Supreme Court in the case of Yogeshwar Singh Vs. State of Bihar and Another . The facts of this case were different. In M. Krishnan case, the accused had created some forged documents/bonds/papers etc. and on the basis of those forged documents, had withdrawn huge amount of money. A suit was also filed by the informant of the case for recovery of the amount and for setting aside the forged document. The Apex Court has held that merely because a suit is filed, the criminal proceedings cannot be said to be unwarranted. Referring to Sections 465 & 468 of the Indian Penal Code, the Supreme Court has held that where the intention is to cheat or that apparently a document has been forged would not solely come within the ambit of a civil proceeding, rather the reasoning of the Court is that forgery in itself is an offence which is punishable under the Indian Penal Code and, therefore, the Court held that both remedies would be available to the informant/complainant of the case in question.

9. The facts of the present case are distinguishable inasmuch as in a case where the question relates to execution of a sale deed, the other side i.e. the vendor could take certain defence and give good reasons for not executing the sale deed and demonstrate in the Court below that the agreement entered between the parties was not honored and on which ground, the Court may consider to dismissing the suit for specific performance.

10. Having regard to the facts of this case, the order taking cognizance dated 05.09.2007 passed by the Chief Judicial Magistrate, Darbhanga in L.N.M.U Police Station Case No. 17 of 2007 (Trial No. 2881 of 2007) is hereby quashed.

11. In the result, this application is allowed.