
(2010) 09 PAT CK 0141

In the Patna High Court

Case No : Criminal Miscellaneous No. 11226 of 2006

Daya Shankar Prasad Sharma

APPELLANT

Vs

The State of Bihar and Dharam Nath Singh

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2011) 2 PLJR 63

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Akhilesh Chandra, J.—Heard learned Counsel for the petitioner and learned Additional Public Prosecutor for the State. None appeared on behalf of complainant opposite party No. 2.

2. This is an application u/s 482 of the Criminal Procedure Code seeking quashing of order dated 23.02.2006 passed by VIIIth Sessions Judge, Muzaffarpur, in Criminal Revision No. 152 of 2004 setting aside order dated 26.08.2004 in Complaint Case No. 478/2004 passed by Sri S.K. Jha, Judicial Magistrate, 1st Class, Muzaffarpur, dismissing the Complaint Case No. 478/2004 after inquiry.

3. The relevant facts of this case is that opposite party No. 2 preferred complaint case No. 478/2004 before the Court of S.D.J.M. (West) Muzaffarpur alleging therein that on 16th March 2003 there was an agreement between him and the accused for sale of land of Khata Nos. 2812, 3166 and 1955 respectively for an area of 9 decimals, 66 decimals and 92 decimals for a sum of Rs. 1,93,000/- out of which 1,43,000/- was paid in advance in different phases (details is missing). But in spite of repeated requests the petitioner did not received remaining Rs. 50,000/- and execute deed of transfer. The complainant further apprehends that some papers under his signatures may be misused by the petitioners from whom

other lands were purchased earlier by the complainant.

4. On receipt of complaint petition and recording statement of few witnesses during inquiry, court below finding the case is of civil nature and apprehension of the complainant about filing of any case at the hands of the petitioner without any substance dismissed the complaint giving rise to Criminal Revision No. 152/2004 filed in the court of learned Sessions Judge, Muzaffarpur, which has ultimately been disposed of by learned VIIIth Additional Sessions Judge, who allowed the Revision set aside the order of the court below and directed for further inquiry.

5. Learned Counsel for the petitioner submitted that for specific performance of the contract, the complainant has already filed one title suit No. 511 of 2003 which is pending in the competent court at Muzaffarpur, no other details or copy of the plaint is on record but by concealing pendency of such suit, the complaint petition in hand was filed just by way of pressure tactics. Learned Additional Public Prosecutor while supporting the order submitted that during inquiry witnesses were examined and Revisional Court has rightly passed the order for further inquiry as at the initial stage courts below are not required to examine the materials with end and view to see substantial support.

6. No doubt, at the stage of cognizance, the Magistrate is required to be prima facie satisfied on the basis of evidence adduced before him that a case is made out for proceeding against the accused. This is also the spirit of order of this Court in a case of Md. Nisar Alam and Ors. v. State of Bihar and Anr. reported in 1997 (1) East CrC 892 Pat. Whereupon reliance has been placed by learned Additional Sessions Judge by allowing the Revision. Case in hand speaks just otherwise, it has been filed as per averments made in the complaint petition only for breach of terms and conditions of an alleged agreement to sale nothing more. Not even a single submission made in the complaint petition attracts commission of any criminal offence rather it is outright a civil dispute.

7. It is true that before the court below filing of the suit of the specific performance of the contract by the complainant was not placed but now, it can be said that the complainant with ulterior motive concealed such relevant fact from the courts below, on this ground also the complainant opposite party makes himself liable for dismissal of the complaint which has even in absence of such important fact rightly been dismissed by the initial court. Any interference in the initial order was not at all required.

8. Accordingly, order of Revisional Court is not sustainable. In the result, impugned order stands quashed, order of the learned Magistrate dismissing the complaint is restored, consequently, this application is hereby allowed.