
(2019) 12 PAT CK 0040

In the Patna High Court

Case No : Criminal Miscellaneous No. 14936 Of 2015

Md. Taslim Safi

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 417

Citation : (2019) 12 PAT CK 0040

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Sudhanshul Kumar Lal, Randhir Kumar, Rajendra Pd. Nat

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and learned APP for the State.
2. The petitioner had purchased 1 kattha of land in Plot No.1556 under Khata No.120(ka) from opposite party No.2 through registered sale deed dated 11.06.2011 on a total consideration of Rs.40,000/-, which would be evident from a copy of the sale deed at Annexure-3. The complainant who is an illiterate person was identified by co-accused Chedi Tanti. The deed writer and other witnesses of the document are not accused in this case.
3. The petitioner filed Bakhri P.S. Case No.201/2013 on 04.09.2013 against the opposite party No.2 alleging therein that though opposite party No.2 sold away one kattha of the land in Plot No.1556 however, only 9 dhurs of land was left to him which revealed from Indu Devi and other purchaser from opposite party No.2 who stated that out of total area of 5 kattha 19 dhur in Plot No.1556 they had already purchased earlier 5 katha 10 dhur. Therefore, the petitioner found himself cheated at the hands of opposite party No.2.
4. Thereafter, the present Complaint Case No.10105(c)/2014 was filed by opposite party No.2 against the petitioner and others alleging therein that in fact

the agreed consideration money was Rs.80,000/- for 9 dhurs of land, however the petitioner in collusion with others including the officers of the registry office got entry of 1 kattha of land sold for Rs.40,000/-only and never paid the remaining Rs.40,000/- in spite of repeated demand.

5. The learned Magistrate who passed the impugned order of cognizance dated 03.02.2015 has recorded that "complainant's case is more fit for civil liability and even if any scope is left for criminal liability against the persons named in the complaint petition it is only under section 417 of the IPC." Thus, the magistrate was himself in dilemma whether a criminal liability is made out or not.

6. On the basis of aforesaid factual position, the order of cognizance has been challenged in this application under Section 482 Cr.P.C on the ground that the criminal prosecution is abuse of the process of the court inasmuch as the present complaint case has been lodged with malice and to wreak vengeance due to earlier police case filed by the petitioners. There is presumption of regularity of the official act and the burden is on the opposite party No.2 to displace the same. The Registrar as well as the witnesses including the draftman of the sale deed are not accused in this case, therefore, their act cannot be doubted in the criminal proceeding and if they are not under doubt their act would suggest genuineness of what is reflected in the registered sale deed.

7. Learned counsel for the complainant, though opposed the prayer of the petitioner, however failed to substantiate that the complainant had more land than 9 dhurs in the referred plot nor it has been denied that 5 kattha 10 dhurs was already sold to some other person.

8. In view of the aforesaid disputed question of fact, evidently a case of civil liabilities is made out and unless the registered sale deed is cancelled by a competent civil court criminal proceeding is apparently an abuse of the process of the court

9. Accordingly, the impugned order is set aside and this application is allowed.