

(2019) 09 PAT CK 0143

In the Patna High Court

Case No : Criminal Miscellaneous No. 39092 Of 2013

Meena Sahi

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 23-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 415, 420
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2019) 09 PAT CK 0143

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Amrendra Nath Vishawas, Murlidhar

Final Decision : Disposed Of/Allowed

Judgement

1. Heard learned counsel for the petitioner and learned A.P.P. for the State.
2. This application under Section 482 of the Code of Criminal Procedure has been preferred for quashment of order of summoning dated 28.06.2013 passed in Complaint Case No.811 of 2012, whereby the learned Judicial Magistrate 1st Class, Vaishali at Hajipur has asked the petitioner to face trial for the offence under Section 420 of the Indian Penal Code.
3. The challenge is on the ground that a bare perusal of the complaint petition would show that the case is purely of civil dispute and the complainant (opposite party herein) has deliberately attempted to give it a colour of criminal offence, just to wreck vengeance. In other words, the complaint petition does not disclose commission of any offence and makes out no case against the petitioner.
4. According to complaint petition, opposite party No.2 entered into an agreement with the petitioner on 03.08.2003 to purchase 02 Kathas of plot No.3388 under Khata No.761, situated in Mohalla- Dighi Kala in the town and district of Hajipur. The rate of the land agreed between the parties was Rs.1,35,000/- (Rupees One Lac and Thirty Five Thousand) per Katha, total cost

Rs.2,70,000/- (Rupees Two Lacs and Seventy Thousand). The petitioner received the total consideration money and gave receipt of the same and promised to execute sale deed after the marriage of her daughter. Thereafter, petitioner went to Delhi. Opposite party No.2 tried to contact the petitioner but the petitioner was evading execution of the sale deed. Ultimately, legal notice dated 02.08.2006 was sent to the petitioner. On telephone, the petitioner replied that her sister Siddhi Sahi has brought a suit for partition bearing Partition Suit No.197 of 2003 in the court of learned Sub-Judge, Hajipur.

A copy of the plaint at Annexure- A would reveal that the plot under agreement has total area of 84 Kathas and is also subject matter of the suit for partition, wherein half share of the petitioner was admitted.

5. The petitioner further informed in reply to the legal notice that the petitioner has already filed a petition before the trial court in the partition suit aforesaid, praying therein for permission to sale the suit property and permission to execute sale deed in respect of 09 Kathas of the said plot No3388. A copy of the petition is at Annexure- 6.

6. By order dated 22.08.2003 passed in the aforesaid suit, the learned trial judge restrained both the parties to not to transfer the suit land without permission of the court.

7. According to complaint petition, the said partition suit was dismissed for non-prosecution on 21.11.2011 and request of opposite party No.2 to execute the sale deed was finally turned down by the petitioner on 22.03.2012. Hence, allegation is that even after no judicial order was in existence, restraining the parties to the suit from executing the sale deed, the petitioner did not execute the sale deed, as such committed criminal breach of trust and misappropriation.

8. Contention of learned counsel for the petitioner is that from the narration of the fact above , it is evident that there is lack of culpable intention of the petitioner at the time of making initial promise and even thereafter. Hence, offence under Section 415 of the Indian Penal Code is apparently not made out.

Learned counsel contends that after the dismissal of the partition suit, with the intervention of the well wisher of the family and under pressure of the sister, the plot which was subject matter of the agreement to sale was compelled to be given to the share of the sister. However, even during pendency of this proceeding, the petitioner was ready to refund the consideration money along with interest. The petitioner had produced Bank Draft of Rs.5,50,000/- (Rupees Five Lacs and Fifty Thousand) in the name of the complainant along with supplementary affidavit. The amount was double the consideration money. On the basis of aforesaid material, contention of the petitioner is that at no point of time, the petitioner was dishonest and fraudulent with the complainant.

9. At the time of hearing this application, no one appeared on behalf of the opposite party No.2. However, counter affidavit filed on behalf of opposite party

No.2 is on the record.

10. In the counter affidavit, opposite party No.2 has stated that Late Mritunjay Narayan Sharma had two daughters only, namely, Sidhi Sahi and the petitioner, Meena Sahi and about 11 acres of property belonging to Late Mritunjay Narayan Sharma devolved upon his two daughters, both having half shares. Further contention is that petitioner had entered into an agreement to sale an area 31 decimal of plot No.3388 in favour of Punam Kumari on 13.07.2002. A copy of the agreement is at Annexure- A. Punam Kumari filed a case and only thereafter petitioner executed registered sale deed dated 26.07.2010 in favour of Punam Kumari, vide sale deed at Annexure- B. Further contention is that the petitioner entered into an agreement dated 24.04.2003 to transfer 09 Kathas of the aforesaid plot No.3388 in favuor of Arvind Kumar, her cousin brother. The aforesaid conduct of the petitioner shows her fraudulent and dishonest intention while entering into agreement with the complainant.

11. An agreement to sale does not create title in favour of the intended purchaser, nor it extinguishes the title of the intended vendor, rather it creates a right enforceable in law at the instance of the aggrieved party. It is not in dispute that opposite party No.2 has not brought any proceeding to enforce his civil right.

12. The most important ingredient to prove charge under Section 420 of the Indian Penal Code is culpable intention at the time of making initial promise. The culpable intention of the petitioner was/is evidently not there for the reason that the petitioner has got title over plot No.3388, which has an area of 84 Kathas. Thus, only for the reason that petitioner had entered into an agreement to sale with some other prior to the agreement with the complainant would not make the petitioner carrying a dishonest and fraudulent intention at the inception. Moreover, the petitioner fairly admitted the agreement to sale with the complainant and the factum of partition suit brought by her sister in the same year as well as judicial order of the court, prohibiting the parties from transferring the suit property. Therefore, judicial order was there in the way of performance of agreement by the petitioner, till dismissal of the suit in the year, 2011. Moreover, the petitioner during pendency of this proceeding had fairly conceded and had produced a Bank Draft of double the amount of the consideration money, which included interest on the principal money. Since the complainant denied to accept the consideration money, as the complainant was interested to get the land through proceedings of the court, the matter could not be materialized amicably. However, the entire factual position of this case, as discussed above makes out a case of civil dispute only. Hence, the same cannot be allowed to be given a colour of criminal prosecution, which would apparently result in miscarriage of justice. Hence, the impugned order and entire criminal proceeding stands quashed, hereby and this application is allowed, accordingly.