

(2012) 05 JH CK 0005
In the Jharkhand High Court
Case No : A.B.A. No 4202 of 2011

Saurav Agarwal

APPELLANT

Vs

The State of Jharkhand and Brindaban Mahato

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438(2)
Penal Code, 1860 (IPC) — Section 34, 406, 420

Citation : (2012) 05 JH CK 0005

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant; A.K. Sahani, Advocate and for the Opp. Party. No. 2, for the Respondent

Judgement

Jaya Roy, J.—Heard the learned counsel for the petitioner and the learned counsel or the Opposite party No. 2. Petitioner is an accused in a case registered under Sections 406/420 read with Section 34 of the Indian Penal Code.

2. The prosecution case in brief is that the complainant has filed a complaint petition against the petitioner and other co-accused Suresh Agarwal (father of Saurav Agarwal) stating therein that as the complainant was having landed property measuring 7920 Sq. ft. at Mouza Dindli P.S. Adityapur, District Seraikella Kharsawan, on being approached by the petitioner Saurav Agarwal and co-accused Suresh Agarwal to give the said land to them, they and the complainant entered into an agreement to certain terms and conditions reduced in writing in the shape of development agreement dated 4.2.2004 at Jamshedpur. The aforesaid accused persons paid a sum of Rs. 2,00,000/- to the complainant as part performance of the terms and conditions of the aforesaid agreement at the time of handing over of the land. According to the specific terms and conditions of the agreement, the aforesaid persons undertook to hand over total eight numbers of newly constructed flats and seven numbers of shop rooms, two car parking space and six scooter parking space in the ground floor and the

remaining flats and shops shall remain in possession of the accused. After completion of the construction, inspite of repeated request/demands made" by the complainant, not even a single flat or shop room constructed over the land of the complainant, has ever been handed over to him according to the specific terms and conditions of the agreement. Ultimately, the aforesaid accused persons flatly denied to give any flat or shop room to the complainant. It is further alleged that during course of development in the name of providing water and electricity connection and in order to avoid personal appearance before any authority, they have also obtained some signatures of the complainant on blank stamp papers and the accused petitioners have converted the same into a valuable document and hereby the accused persons have cheated the complainant. The complainant having no alternative has filed the present case.

3. Mr. Indrajit Sinha, the learned counsel for the petitioner has submitted that the complainant after executing development agreement, sold away the entire land to the petitioner by registered Sale deed and now he has got no right, title or interest over the same. It is also contended that according to the allegation in the complaint petition, no case u/s 406 and 420 of I.P.C. is made out against the petitioner. The learned counsel for the petitioner annexed the copy of the Development Agreement as Annexure-2 in this application.

4. Mr. Sinha has further contended that later on due to urgent need of money, the complainant decided to cancel the development agreement and sell the entire land to the petitioner for a total consideration amount of Rs. 7,40,040/- and a sum of Rs. 4,00,000/- was paid in cash to the complainant on 27.08.2005, the receipt of the same has been acknowledged by the complainant and he has also issued a money receipt in token of receipt of the said amount which is annexed in this application as Annexure-3. It is also submitted that the complainant has filed the instant case after five years of selling the land only to get extra money from the petitioner and also to harass him.

5. Mr. Sinha has further contended that the complainant has also sold other pieces of land to the petitioners which are adjacent to the land in question for a consideration amount more or less equivalent to the consideration amount of the land in question. Therefore, it cannot be said that the petitioner has committed any offence alleged by the complainant and he is entitled to get anticipatory bail in this case.

6. Mr. A.K. Sahani the learned counsel for the opposite party no. 2 has submitted that admittedly a deed of development agreement has been executed between the parties in which the accused persons agreed to hand over eight flats, seven shop rooms, spaces for parking of two cars and six scooter in the ground floor and in part performance of the agreement the accused persons paid Rs. 2 lakhs through cheque to the complainant. Thereafter, as the complainant is a poor villager and taking advantage of simplicity for developing the land and providing eight flats, seven shops garages parking places, etc. took signatures on certain stamp papers in the name of developing the land (Constructed huge flats over

the same, but inspite of requests, he did not provide even a single flat to him and lastly refused to provide any flat and by misusing the said stamp papers, they are now claiming that they have purchased the land from him.

7. Mr. Sahara has further contended that though at the time of agreement admittedly the accused had paid to the complainant a sum of Rs. 2 lakhs by cheque but utter surprise, the petitioner are now claiming they have paid the price of the land which is Rs. 4 lakhs by cash to the complainant which casts a great doubt on the said payment by the cash. It is also submitted that the money receipt dated 27.8.2005 which is annexed as Annexure-3 of this application is not at all genuine. Thus, all these aspects clearly prove that the petitioner and other co-accused who are father and son, have committed criminal breach of trust and cheated the complainant taking advantage of his simplicity. Therefore, the petitioner is not at all entitled to get the anticipatory bail. Considering overall view of the facts and circumstances of the case and considering the submissions made by the counsel appearing for both the parties, I find the registered sale deed was executed for the land in question by the opposite party no. 2 on 8.9.2005 (Annexure-4) and the present complaint petition was filed in the year 2010 i.e. after five years of the execution of the registered sale deed and furthermore, till date no civil suit was filed by the opposite party no. 2 for cancellation of the aforesaid registered sale deed. In my opinion, the petitioner deserves anticipatory bail in this case Accordingly, I direct the petitioner to surrender before the trial court within a period of one month from the date of this order and if he surrenders, the trial court/ court below will release him on bail on furnishing bail bond of Rs. 10,000/- (Rs. Ten thousand) with two sureties of like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class at Jamshedpur in connection with C/1 Case No. 3241 of 2010 with the condition that the petitioner remain physically present before the trial court once in a month on the date fixed for trial till conclusion of the trial and subject to the conditions that one of the bailors will be local resident having immovable property within the jurisdiction of the district concerned and subject to the conditions laid down u/s 438(2) of the Code of Criminal Procedure.