

Md. Shabbiruddin and anr. Vs. State of Bihar and anr.

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Court : Patna

Decided On : Sep-08-2004

Judge : M.L. Visa, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 406 and 420; [Code of Criminal Procedure \(CrPC\) , 1973](#)

Appeal No. : Cr. Misc. No. 36088 of 2002

Appellant : Md. Shabbiruddin and anr.

Respondent : State of Bihar and anr.

Disposition : Application allowed

Prior history : M.L. Visa, J. 1. This application by petitioners has been filed for quashing the order dated 2.9.2002 passed by the Court of Shri Ashok Kumar Singh, Judicial Magistrate, Patna in Trial No. 1571 of 2002 arising out of Complaint Case No. 1377 (C) of 2002 whereby cognizance has been taken against the petitioners alongwith others for offence under Sections 406, 420 and 120B of Indian Penal Code (In short 'IPC'). 2. The brief facts of the matter are that Rajendra Prasad, opposite party No. 2 filed

Judgement :

M.L. Visa, J.

1. This application by petitioners has been filed for quashing the order dated 2.9.2002 passed by the Court of Shri Ashok Kumar Singh, Judicial Magistrate, Patna in Trial No. 1571 of 2002 arising out of Complaint Case No. 1377 (C) of 2002 whereby cognizance has been taken against the petitioners alongwith others for offence under Sections 406, 420 and 120B of Indian Penal Code (In short 'IPC').

2. The brief facts of the matter are that Rajendra Prasad, opposite party No. 2 filed Complaint Case No. 1377 (C) of 2002 in the Court of Chief Judicial Magistrate, Patna against the petitioners, M/s. Addisons Constructions Company Private Limited Ashok Kumar Singh said to be one of the Directors of M/s Addisons Constructions Company Private Limited and others under Sections 403,467, 468, 469, 420, 500, 504, 209 and 120B read with Section 34 of the IPC alleging therein that Ashok Kumar Singh approached the complainant for giving complainant's land for development and to construct a multi-storeyed residential-cum- commercial complex on the land to which complainant agreed and the terms and conditions which were settled between them along with other conditions included that out of the built-up area of multi-storeyed building, the complainant would get 45% of the share and developer would get remaining 55% and the project would be completed within a period of two years from the date of agreement and time was essence of contract and developer was to get a grace period of six months more to complete the project on payment of Rs. 25,000/- per month to the complainant and one of the conditions was that if the project was not completed in time in terms of the agreement, the developer shall have no right in the project which will vest in the landlord. The further allegation of complainant was that project could not be completed in time and on the expiry of the time, agreement came to an end and developer lost all rights on the project and complainant served a lawyer's notice upon Ashok Kumar Singh and M/s. Addisons Constructions Company Private Limited but the developer created forged sale deeds at Patna in respect of built-up project in favour of the petitioners and others and got those sale deeds registered in Mumbai. According to the complainant, petitioners and other co-accused persons, in connivance with co-accused Ashok Singh, brought these sale deeds in existence in order to grab the property of complainant fully knowing that developer had no right to the property because the project was not completed in time and

agreement, which was arrived at between complainant and developer, was not existing at the time of execution of sale deeds,

3. The case of the petitioners is that they are not in any way related either to co-accused Ashok Singh or M/s. Addisons Constructions Company Private Limited and they are simply vendees and they purchased the property against valid payment of Rs. 1,70,000/- which they paid by cheque to M/s. Addisons Constructions Company Private Limited. Their further case is that the complain petition itself shows that dispute is between the complainant and M/s. Addisons Constructions Company Private Limited.

4. The learned counsel of opposite party No. 2 has argued that since the petitioners have purchased the property from M/s Addisons Constructions Company Private Limited which had got no right to transfer the property, the petitioners are also liable for the offence of cheating the complainant because they, in connivance with co-accused Ashok Singh and M/s. Addisons Constructions Company Private Limited purchased the property.

5. In the complaint petition (Annexure-1), the complainant himself has admitted that he entered into an agreement with M/s Addisons Constructions Company Private Limited for constructing a multi-storeyed building on his land and he had executed a power-of-attorney in favour of M/s. Addisons Constructions Company Private Limited. The terms and conditions of the agreement between the complainant and M/s. Addisons Constructions Company Private Limited included that out of the constructed multi-storeyed building 45% share will go to complainant and remaining share shall remain with developer meaning thereby developer has full right over his 55% share. If the allegations, as made out in the complain petition are taken on their face value, no case made out against the petitioners because they are simply the purchasers from the developers in whose favour, complainant had already executed power-of-attorney. The case of complainant is that as per the terms of another power-of-attorney, he was to get a sum of Rs. 4,00,000/- from M/s. Addisons Constructions Company Private Limited out of which he had received only a sum of Rs. 2,00,000/-. From the averments made in the complaint petition, it does not support the case of complainant that

petitioners acted in connivance with Ashok Singh and M/s. Addisons Constructions Company Private Limited. Besides this the complainant has himself admitted that M/s. Addisons Constructions Company Private Limited has filed a number of cases against him and his family members, the details of which have been given in para-10 of complaint petition. All these facts clearly show that whatever dispute there may be that is between the complainant and M/s Addisons Constructions Company Private Limited and petitioners are purchasers from developer of a project and purchase of any property from its developer in usual course of business is not an offence.

6. I, therefore, find that so far the petitioners, who are simply purchasers, are concerned, no case is made out against them and cognizance against them on the basis of averments made in the complaint petition of complainant cannot be upheld.

7. In the result, this application is allowed and the order dated 2.9.2002 passed by Shri Ashok Kumar Singh, Judicial Magistrate, Patna in Trial No. 1571 of 2002 arising out of Complaint Case No. 1377 (C) of 2002, so far it relates to petitioners is concerned, is hereby quashed.

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