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Court : Patna

Decided On : Apr-21-2011

Judge : S.A. Khan, J.

Acts : Indian Penal Code (IPC) - Sections 420, 467, 468, 471

Appeal No. : Criminal Miscellaneous No.56597 OF 2006

Appellant : Manoj Kumar Singh, and ors.

Respondent : State of Bihar, and anr.

Judgement :

1. The petitioners had instituted the First Information Report i.e. Gardanibagh P.S. Case No. 98 of 2006 for offences under Sections 420, 467, 468 and 471 of the Indian Penal Code alleging that Pramod Narayan Poddar opposite party no. 2 has forged the signature of the petitioners and prepared a development agreement.
2. Learned counsel for the petitioners at the initial stage accepts that there was some oral talk of an agreement between the parties in which the petitioner no. 1 had received a sum of Rs. 3,00,000/-.
3. The opposite party no. 2 was taken into custody in the case instituted by the petitioners. Thereafter he filed a complaint petition dated 14.2.2006 alleging therein that the petitioners had entered into a development agreement with opposite party no. 2 for which they had advanced a sum of Rs. 9,45,000/-. It is said that the complainant learnt that the petitioners had now entered into a

development agreement with a third party which amounts to an act of cheating. On the basis of the aforesaid complaint petition, cognizance was taken on 1.5.2006. Learned counsel refers to certain documents relating to the complaint case itself. The first is the compromise petition filed by the petitioners and the opposite party no. 2 by which the petitioners agreed to return Rs. 3,00,000/- that they had taken by way of an advance. The petitioners thus returned Rs. 3,00,000/- with interest thereon by Cheques and cash both. The parties filed an application to compromise the complaint case in the Court of the Chief Judicial Magistrate, Patna. However, after opposite party no. 2 was granted bail in Gardanibagh PS Case No. 98 of 2006, an application for withdrawal of the compromise petition was filed by the opposite party no. 2 stating therein that they were pressurized into compromising the case as the opposite party no. 2 was in custody in the case filed by the petitioners.

4. After pursuing all the documents as well as the statements made in the petition and the counter affidavit, this Court comes to the conclusion that the main allegation is with respect to recovery of the advance amount. There is no prima facie evidence to show that the petitioners have entered into a development agreement during the period 28.1.2006 i.e. the date of filing the criminal case by the petitioners and 14.2.2006 i.e. the date on which the complaint petition was filed. Therefore, in my opinion, it cannot be said that an offence under Section 420 of the Indian Penal Code is made out against the petitioners. As far as the recovery of the amount is concerned, once the complainant has accepted that he has received Rs. 5,00,000/- by way of compromise in the complaint case 401(C) of 2006, I do not see how it can be said that the petitioners have cheated the informant and not paid him the amount which was allegedly taken as an advance for the development agreement. It is accepted in the complaint petition itself that a receipt of Rs. 3,00,000/- was granted by the petitioner no. 1. Therefore, to say that the amount paid, was much higher than the amount (Rs. 5,00,000/-) on which the parties compromised the matter prima facie is not acceptable to this Court. Considering all aspects of the matter, I do not think that this is a fit case in which the Court can proceed with this matter.

5. In the result, the order dated 1.5.2006, passed in Complaint Case No. 401(C) of 2006 pending in the Court of the Judicial Magistrate, 1st Class, Patna is quashed. This application is thus, allowed.

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