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**(2020) 07 PAT CK 0125**

**Patna High Court**

**Case No:** Criminal Miscellaneous No. 77920 Of 2019

Navinta Devi And Anr

APPELLANT

Vs

State Of Bihar

RESPONDENT

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**Date of Decision:** July 9, 2020

**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 420, 406
- Code Of Criminal Procedure, 1973 - Section 438(2)

**Hon'ble Judges:** Ahsanuddin Amanullah, J

**Bench:** Single Bench

**Advocate:** Manish Kumar, Jharkhandi Upadhyay, Sheikh Arkan Ahmad

**Final Decision:** Disposed Of

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### **Judgement**

1. The matter has been heard via video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Manish Kumar No. 2, learned counsel for the petitioners; Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the "APP"™) for the State and Mr. Sheikh Arkan Ahmad, learned counsel for the informant.

3. The petitioners apprehend arrest in connection with Kotwali PS Case No. 57/2019 dated 06.02.2019, instituted under Sections 420/406/34 of the Indian Penal Code.

4. The allegation against the petitioners is that they had taken money for transferring a piece of land in favour of the informant, but the land was not transferred and the money was also not returned.

5. Learned counsel for the petitioners submitted that from no angle, the allegations, even if taken to be true on their face value, constitute any criminal offence as it is a purely civil dispute. Learned counsel submitted that with regard to the money which the informant claims to have paid to the petitioner, the same either not being returned or the land in lieu thereof not being transferred, the issue has to be adjudicated before the Civil Court of competent jurisdiction, either by way of suit for recovery of money and/or damages or for specific performance. Learned counsel submitted that no other allegation is made which would give any criminal colour to the entire complaint. It was further submitted that the petitioners have no other criminal antecedent.

6. Learned APP submitted that there is allegation of the petitioner taking money and not transferring the land. However, he fairly submitted that the allegation discloses that it is a civil dispute.

7. Learned counsel for the informant submitted that the petitioners have not transferred the land with criminal intent. It was further submitted that there has been transfer of part of the land in favour of other persons, for which money had been taken from the informant.

8. At this juncture, when the Court put a direct query to learned counsel as to why all this was not written in the FIR, learned counsel submitted that at that time all these things were not known to him.

9. Learned counsel for the petitioners submitted that events or allegations which were not in the knowledge of the informant and not being stated in the FIR, cannot be looked into in the present case and would not give the case a criminal colour and further, that such allegations are baseless.

However, he again reiterated his stand that in view of the nature of complaint made, the only remedy for the informant is to approach the Civil Court of competent jurisdiction.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioners be released on bail upon furnishing bail bonds of Rs. 25, 000/- (twenty five thousand) each, with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Gaya in Kotwali PS Case No.

57/2019, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further (i) that one of the bailors shall be a close relative of the petitioners, (ii) that the petitioners and the bailors shall execute bonds with regard to good behaviour of the petitioners, and (iii) that the petitioners shall also give an undertaking to the Court that they shall not indulge in any criminal activity, tamper with the evidence or influence the witnesses. Any violation of the terms and conditions of the bonds or the undertaking shall lead to cancellation of their bail bonds. The petitioners shall co-operate with the Court as well as the police in the investigation, failing which also, their bail bonds shall be cancelled.

11. The application stands disposed off in the aforementioned terms.