IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 976 of 2014

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1. Phuleni Devi, Wife of Late Bhukhal Upadhyay.
2. Rajesh Upadhyay Son of Late Bhukhal Upadhyay.
All resident of Mohalla - Gopeshwar,Within ChaprTown, P.S. Bhagwan, Bazar, Dist.-Saran

.... Petitioners.

Versus

1. State of Bihar
2. The Collector, Chapra, Saran

.... Respondents

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Appearance :
For the Petitioners : Mr. Nagendra Rai, Advocate.
Mr. Navin Nikunj, Advocate.
For the Respondent: Mr. Bijay Kumar Pandey, A.C. to S.C. 5.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

8 03-07-2015 Heard learned counsel for the petitioner and learned counsel for the State.

2. This is a petition for quashing the entire criminal proceeding as well as F.I.R. arising out of Chapra Town P.S. Case No. 241 of 2014 registered for the offences under Sections 419, 420, 468 and 120B of the Indian Penal Code.

3. The prosecution case, as alleged, in the written report by the Executive Engineer, Building Department, alleging that one Bbhukhal Upadhyay was a contractor and he entered into an agreement for construction of the residence of 3rd Grade Employees vide Agreement No. 17-F-2/1984-85 total amount of entire work of Rs.1,40,981. It is alleged that after completion of the work the entire amount was paid except Rs.10,000/- which was as keep back amount. The department found during inspection that some defects in the work and thereafter, gives direction to mend the defects in the work. After removal of the defects entire amount was paid by deducting Rs.2002/- as sales tax and royalty amount. It is further alleged that there was some delay in payment of the keep back money for which Bhukhal Upadhyay has been filed a Misc. Case No. 21 of 1992 in the Court of Sub Judge-I for payment of said keep back amount. During the pendency of this case, the amount was paid to Bhukhal Upadhyay in presence of his son Rajesh Upadhyay. It is further alleged that in this way the entire amount for the work allotted was paid to the contractor Bhukhal Upadhyay, the contractor which was received in presence of his son Rajesh Upadhyay. Rajesh Upadhyay under a criminal conspiracy and fraud did not give information regarding payment to the court and keeping the court in dark getting order passed in his favour by filing Execution Case No. 2 of 2001 for auction sell of Government building. It is further alleged that Rajesh Upadhyay used to take active part in the business work of his father after death of his father Rajesh Upadhyay and his mother became made parties on 21.08.2000. It is further alleged that even after being a party Rajesh Upadhyay and his mother did not inform the court regarding payment of the amount. Further case is that Bhukhal Upadhyay was suffering from various diseases and in his absence Rajesh Upadhyay used to help his father for doing the business and even Rajesh Upadhyay and his mother added as party in Misc. Case No. 21 of 1992 and Execution Case No. 02 of 2001 and got decree by fraud and conspiracy defalcated the Government property and grab the Government money under execution.

4. The learned counsel for the petitioner submits that the allegation made in the complaint even if taken to true on the face value does not make out cognizable offence to institute an F.I.R. and case be investigated by police and the allegation made only make out a civil consequence and the case has been filed after about 20 years of the occurrence when the allegation or fact came to the knowledge of the State. It is further contended that lodging of the F.I.R. is only with ill motive to harass the petitioner when the informant find itself unable to get a favourable order from Civil Court.

5. Learned counsel for the State, however, contends that offence of fraud is made out as the petitioner has filed suit by making a false pleading that he had not got any information about the payment.

6. Hence taking into consideration the respective submission whether the allegation made in the complaint if taken to be true on the face value makes out cognizable offence.

7. Learned counsel for the petitioner submits that suit was filed bearing Misc. Case No. 21 of 1992 in the year 1992 and ex parte decree was passed in 1994. The State moved Misc. Appeal No. 410 of 1996 against the ex parte decree, the ex parte decree was set aside and the case was remanded back to hear afresh. Thereafter, on contest, decree was passed in 2000 for the execution of decree in Execution Case No. 02 of 2001 was filed in consequence of the execution of decree, Government property was auction sold and delivery of possession was on confirmed on 16.05.2000. The State then filed Misc. Case No. 4 of 2006 for cancellation of auction sale but did not challenge the decree and has placed copy of the judgment of the decree which was passed from the Court of 1st Subordinate judge, Chapra in Misc. Case no. 21 of 1992. The Misc. Case for cancellation of auction sale bearing Misc. Case No. 4 of 2006 is still pending and during the pendency of the said case, an F.I.R. has been lodged in the year 2014, alleging that petitioner has got decree by suppressing the fact that decree was obtained by suppressing the fact that contract amount was paid to the contractor Bhukhal Upadhyay and the petitioner even having knowledge of the payment of amount has suppress this fact to get the decree and fraudulently suppress the fact that contract amount has not been paid.

8. However, going in the allegation made in the F.I.R. that suit has been filed on false document or fact that payment of the keep back money has not been disclosed to the Subordinate Judge 1st, Chpara even after Rajesh Upadhyay and his mother made party in the suit. However, when the State was party and contested the suit, it was incumbent on the State to bring to the notice about the fact to the court, the fact was well within the knowledge of the State. However, the said decree was passed in 2000, but the admitted fact that said decree has not been challenged by State till date, though, even in execution of decree, D.P. has been challenged in 2006, but the decree has not been challenged as yet a F.I.R. lodged in 2014 after fourteen years of passing of the cree and twenty-two years of the knowledge about the fact alleged as state appeared on 1996.

9. Further taking into consideration the merit of the case that decree was obtained by suppressing the fact, then it may be fraud, but that fraud does not make out an offence for criminal investigation tried by a Criminal Court and the said may be challenged in Civil court for setting aside the decree. **Fraud** has been defined under Contract Act. Section 17 of the Contract Act as active concealing of fact by one having knowledge or believe of the fact. However, when suit has been filed in the face of the fact and other side contested, it was incumbent of the other side to brought to the notice of the court and if plaintiff has not pleaded for suppressing the fact, the decree may be set aside on the ground of fraud, but the fraud has defined in the Contract Act is not punishable under the Act. Moreover when the decree was passed then got execution of the decree getting execution of sale on the basis of decree cannot be said to be criminal offence.

10. However, suit was filed in 1996 and decree was passed in 2000 and it was alleged that matter was suppressed in the year 1994. However, the State remained silent spectator even though, had knowledge as suit itself has been filed, which was decree on contest even decree was passed, but no F.I.R. was lodged since 1994 to 2014. So the complaint was filed in 2014 after twenty years of the alleged suppressing of fact within the knowledge of State.

11. However, F.I.R. lodged for offence under Sections 419, 420, 468 and 120B of the Indian Penal Code, the allegation made does not make out an offence for offence under Sections

419, 420, 468 and 419 of Penal Code. Section 419 is cheating by impersonation and Section 420 cheating by dishonestly inducing to deliver property. However, '**cheating**' has been defined under Section 415 I.P.C. "whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to "cheat".

12. Hence the cheating defined as deceiving by dishonestly and fraudulently inducing a person to delivery property. Here getting a decree by claiming a claim has been contested to get a decree is neither an impersonation nor an inducement to deceive fraudulently and dishonestly, nor there is any delivery of property by deception. There is neither any allegation of impersonation nor an element of delivery of property by inducement of the person who deliver the property. So get a decree on the basis of claim by plaintiff can neither be said to be cheating nor cheating by impersonation or deception and hence no offence under Section 419 and 420 I.P.C. is made out.

13. So far forgery is concerned '**forgery**' defined under Section 463 of the Penal Code "whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery".

14. Section 464 I.P.C. defines the making of false document and it has three clauses;

First.--- *who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed.*

Secondly.-- *Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise,* *alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration;*

Here it is not case that any interpolation has been made in any deed, hence, this clause also not applicable.

or Thirdly.--- *Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record to affix his digital signature on any electronic record knowing that such person by reason or unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.*

15. It is a mater of concern that in the suit, plaintiff lay his claim and other side contested. One party is won and other party is looser. However, both parties make allegation against each other and criminal case of forgery for making a plea in the court and if forgery is making out, then this Court has right to entertain the complaint.

16. Hence taking plea of fact cannot be said to be making forgery, person made claim property on the basis of some averment if such does not believe that does not mean forged document and hence taking into consideration the allegation on the face value he has not get money as per contract in between the parties which cannot be said to be a false document,

17. Hence taking into consideration the entire allegation even true on the face value, does not make out an offence of forgery and fraud either in criminal case.

18. Hence taking into consideration the allegation made on the written report on the basis of F.I.R. does not make out an offence. Hence if allegation is cognizable, police has no statutory right to investigate the case or lodged F.I.R. It is true in exercise of jurisdiction under Section 482 and 226 for quashing the criminal case is sparingly in most exceptional circumstances.

19. Taking into entire circumstance of the fact and if going into the entire allegation is true on the face value of the written report if does not make out a cognizable offence then lodging of the case and allowing the police to investigate the case does not arise, as the police has no jurisdiction to lodge a case to investigate when cognizable offence is not made out.

20. Hence, under the facts and circumstance, F.I.R. and criminal prosecution is hereby quashed and the petition is allowed.

m.p. **(Gopal Prasad, J)**

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