IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.85 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- WEST CHAMPARAN (BETTIAH)

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Bhola Nayak Surhi @ Bhola Nayak @ Bhola Nayak Sudhi, son of Late Shivdhari Nayak, resident of village-Sukhlahi, P.S.-Mainatand, District-West Champaran.

.... Petitioner

Versus

1. The State of Bihar
2. Hiraman Sah, son of Late Fagu Sah, resident of village-Sukhlahi, P.S.-Mainatand, District-West Champaran.

.... Informant-Respondent

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Appearance :

For the Petitioner/s : Mr. Umesh Chandra Verma, Advocate

For the Respondent/s : Mr. M. K. Upadhyay, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-08-2015

Heard learned counsel for the petitioner and learned counsel for the State.

2. By way of filing the present application under Articles 226 and 227 of the Constitution of India, the petitioner seeks quashing of the first information report (For short 'FIR') of Mainatand P.S. Case No. 82 of 2013 registered under Section 406 and 420 of the Indian Penal Code (For short 'IPC').

3. On 04.10.2013, at about 10.00 a.m., the Opposite Party No. 2, Hiraman Sah, submitted a written report before the Officer-in-charge of Mainatand Police Station alleging therein that:-

> (i) The petitioner took Rs. 30,000/- from his father late Fagu Sah in his presence on condition, as noted down by the petitioner himself in the note book of his father that if the petitioner fails to give paddy within time, he would pay interest thereon.
>
> (ii) After death of his father, on demand, the petitioner kept on avoiding to pay back the money, and a panchayati was convened by the Sarpanch, but he did not chose to participate in the same, and with an intention to misappropriate the amount, he refused to pay back the money.

4. On the basis of the aforesaid written report, Mainatand P.S. Case No. 82 of 2013 was registered under Sections 406 and 420 of the IPC and investigation was taken up.

5. Learned counsel for the petitioner has submitted that the allegations made in the first information report do not constitute any of the alleged offences and therefore criminal prosecution of the petitioner in the present case is unwarranted,

and the investigation being conducted by police tantamounts to abuse of the process of law, and is not going to yield any fruitful result, and therefore, the said FIR is liable to be quashed to secure the ends of justice.

6. He has further contended that opposite party no. 2 has launched the present prosecution for recovery of loan amount given by his father after his death and certainly no criminal offence is made out on such allegation, nor such case can be brought by a successor in interest, rather this issue may be agitated in money suit before a civil court of competent jurisdiction.

7. Lastly, it is submitted that as a matter of fact the petitioner has neither taken loan from the father of the informant, nor he has given any undertaking in this regard to repay the amount. According to him, the present case has been instituted only with oblique and ulterior motive to extort money after preparing a forged and fabricated note as enclosed with the FIR.

8. On the other hand, learned counsel for the State has contended that the allegations made in the FIR do attract the ingredients of offences punishable under Section 406 and 420 of the Indian Penal Code. He contends that since the matter

is under investigation, it would not be proper for this Court to interdict investigation of the case at the initial stage. He has pointed out that there is a definite allegation in the FIR that petitioner had borrowed Rs. 30,000/- from the father of the informant, and after his death, he refused to pay back the money with an intention to misappropriate the amount.

9. I have heard respective counsel for the parties and perused the FIR.

10. At this stage, this court is only concerned with the question whether or not the allegations made in the FIR attract the ingredients of any cognizable offence.

11. In order to examine this question, it would be proper to consider the relevant provisions of the IPC. As noted above, the FIR has been instituted under Sections 406 and 420 of IPC. Section 406 IPC prescribes punishment for criminal breach of trust as defined in Section 405 IPC.

12. Section 405 IPC reads as under:-

> "405. Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which

> such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."

13. A careful reading of Section 405 IPC shows that a criminal breach of trust involves the following ingredients:-

> (a) a person should have been entrusted with property, or entrusted with dominion over property;
> (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;
> (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

14. Section 406 IPC which prescribes punishment for criminal breach of trust as defined in Section 405 of the IPC reads as under:-

> "406. Punishment for criminal breach of trust.-Whoever commits criminal breach of

trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

15. Thus, in order to attract punishment under Section 406 IPC, prosecution must prove:-

(i) that the accused was entrusted with property or with dominion over it; and
(ii) that he (a) misappropriated it; or (b) converted it to his own use; or (c) used it; or (d) disposed of it in violation of any direction of law prescribing the mode in which such trust was to be discharged.

16. In other words, the gist of the offence is misappropriation done in a dishonest manner. There are distinct parts of the said offence. The first part involves the fact of entrustment, wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligation which is created.

17. Section 420 IPC deals with cheating and dishonestly inducing delivery of property. It does not define cheating. It only provides punishment for cheating. Section 415 IPC defines cheating which reads as under:-

> “415. Cheating.-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”.

18. The essential ingredients of cheating as defined under Section 415 IPC are as follows:-

> (a) The accused must have induced fraudulently or dishonestly a person;
> (b) The deceived should be induced to deliver any property to any person or to consent that any person shall retain any property;
> (c) The person deceived, must be intentionally induced by the wrong-doer to do or omit to do anything which he would not do or omit if such deceived person was not so deceived;
> (d) The deceived should suffer any damage or harm in body, mind, reputation or property by the deceitful act of the wrong doer.

19. Section 420 IPC deals with certain specified classes of cheating. It deals with the cases of cheating, whereby

the deceived person is dishonestly induced: (a) To deliver any property to any person; or (ii) To make, alter or destroy (i) the whole or any part of a valuable security; or, (ii) anything which is signed or sealed and which is capable of being converted into a valuable security.

20. Section 420 IPC reads as under:-

> "420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

21. The difference between Section 415 and Section 420 IPC is that where in pursuance of the deception, no property posses but inducement is generated in the mind, the offence would come under Section 415. But where, in pursuance of the deception property is delivered, the offence would be punishable under Section 420.

22. Thus, to establish an offence under Section

420 IPC, it is necessary that it has to be proved that the accused induced someone fraudulently or dishonestly so as to deliver any property or do something in the form of an act or omission. The second crucial aspect is that the complainant has to show that at the time the alleged false representation was made or the inducement offered by the accused, the accused had no intention of honouring the promise. If this is not shown, then the dispute would be only civil in nature.

23. In the present case, looking at the allegations made in the FIR, on the face of it, I find that there is no iota of allegation fraudulent intention at the initial stage. Nowhere, in the FIR, it is stated that the accused had dishonest intention at the time of receiving the amount from the father of the informant. The opposite party no. 2 has launched the present prosecution for recovery of loan amount given by his father after his death, and certainly no criminal offence is made out on such allegation.

24. In **S.W. Palanitkar & Ors.** Vs. **State of Bihar & Anr. [(2002) SCC (Cri.) 129]**, the Supreme Court has in threadbare analyzed the ingredients required under Section 405, 406 and 420 and it concluded as follows:-

"Every breach of trust may not result in a

> penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens reas gives rise to a criminal prosecution as well."

25. Regard being had to the allegations made in the FIR and the law laid down by the Supreme Court, it would be evident that only if the breach of trust is coupled with mens rea, a criminal prosecution would lie.

26. Thus, by going through the allegations made in the FIR, I am unable to find out any materials, prima facie, even disclosing the requirements either for Section 406 or 420 of the Indian Penal Code.

27. Considering the facts and circumstances of the case, I am of the considered opinion that the informant has chosen a short-cut way to realize the amount, converting a civil case into a criminal one and, thereby, abusing the process of law. It is well settled that criminal proceedings are not a short-cut for other remedies available in law. Since no case of criminal breach of trust or dishonest intention or inducement is made out, the essential ingredients of Section 405 and 420 of

the Indian Penal Code are clearly wanting.

28. Accordingly, the impugned FIR of Mainatand P.S. Case No. 82 of 2013 and all consequent proceedings arising out of the said FIR being an abuse of the process of law, are hereby quashed.

(Ashwani Kumar Singh, J.)

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