IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25752 of 2015

Arising Out of PS.Case No. -18 Year- 2015 Thana -GANDHIMAIDAN District- PATNA

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1. Deepak Kumar Sinha Son of Hiralal Verma resident of B/12 Patharwali Gali Indrapuri Path, Naya Tola Saristabad, P.S. Gardanibag, Patna.
2. Ramanuj Singh Son of Late Laldeo Singh resident of Ram Krishna Nagar, New Jaganpura, P.S. Ram Krishna nagar, Patna.
3. Kumar Rajesh @ Bablu , Son of Late Rajnandan Rai resident of Bhejhachak , Anisabad, P.S. Gardabnibag, Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Yuv Raj Singh Son of Late Raghuraj Singh resident of village- P.O. & P.S. Khurja, District- Buland Shahar (U.P.) at Present Flat No. P- 143, Sector 23, Sanjay Nagar, District- Gaziabad, U.P.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kumar Uday Singh, Adv.
For the Opposite Party/s : Mr. Rupak Kumar, Adv.
Mr. Sanjay Mandal, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-04-2016

The present application under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), has been filed by the petitioners for quashing the order dated 1st May, 2015 passed by the learned A.C.J.M., Patna City in G.R. No. 330 of 2015 arising out of Gandhi Maidan P.S.Case No. 18 of 2015, whereby he has taken cognizance of the offences punishable under Sections 420, 406 and 120-B of the Indian Penal Code (for short 'IPC') as against the petitioners and summoned them to face trial.

2. The brief facts of the case are that on the basis of a written information of one Yuvraj Singh, the Opposite Party No.2, the

S.H.O. of Gandhi Maidan Police Station on 11th January, 2015 at 10.15 a.m. registered Gandhi Maidan P.S.Case No. 18 of 2015 for the offences punishable under Sections 406, 420 and 120-B of the Indian Penal Code as against three petitioners and one Sailesh Kumar Singh, who died on 11th January, 2015 itself.

3. The informant Yuvraj Singh has stated in his written report that his father Late Raghuraj Singh was an employee of the Reserve Bank of India, Patna. In 1980, the Reserve Bank Employees Cooperative Thrift & Credit Society Limited (for short 'the Society') purchased land at Mauza Kurkuri and allotted the same to the employees of the Reserve Bank of India. In the said allotment, his father was allotted two plots i.e. plots no. 169 and 170 each measuring 2000 sq ft. The said allotments were made on 27th June, 1989 for Rs.16,087/- each. The membership number of his father was 724. According to the demand of the then General Secretary of the Society and other members of the Committee, his father deposited the entire price of both the plots including the registration expenses with the Society. Thereafter, the Society executed a registered sale deed relating to plot no. 170 in the name of his father and assured to register the other plot no. 169 also in his name in future, which could not be registered in his name due to some reason. The members of the Committee, however, kept on postponing the registration of plot no.

169 on the ground that the registrations of lands of others are also pending. In the meantime, elections of the Committee kept on taking place and the members of the Committee kept on changing and what his father got from them was only assurances. Thereafter, unfortunately, his father died on 7th August, 1991 and his family began facing a lot of problem.

4. The informant has further averred in his written statement that on 6th September, 2011 the present General Secretary Mr. Deepak Kumar Sinha (Petitioner No.1) sold plot no. 169 to one employee Ramanuj Singh (Petitioner No.2) after taking handsome money from him. The informant has further averred that he came to know that Ramanuj Singh is close associate of one Shailesh Kumar Singh, co-accused, who was previously General Secretary of the Society and he has further come to know that Ramanuj Singh never filed any application before the Society for purchase of land in Mauza Kurkuri nor the Society issued any allotment letter to him allotting the said plot to him. Thus, the allegation is that the registered sale deed was executed in the name of the accused Ramanuj Singh without any valid papers.

5. The informant has further contended that the present General Secretary Deepak Kumar Sinha (Petitioner No.1), previous General Secretary Shailesh Kumar Singh (co-accused since dead) and

the witness to the sale deed Kumar Rajesh @ Bablu (Petitioner No.3), in conspiracy with each other for making handsome money, have sold the land allotted to his father to Ramanuj Singh and the said Ramanuj Singh, after few months on 9th April, 2012, executed a registered power of attorney relating to the said land in favour of Smt. Veena Singh, the wife of the previous General Secretary Shailesh Kumar Singh and few months thereafter the said Smt. Veena Singh sold half of the land measuring 1000 sq ft to one Sanjeev Kumar by registered sale deed dated 24th March, 2013.

6. Thus, on the basis of the aforesaid averments, the informant has alleged that it is crystal clear that Deepak Kumar Sinha (Petitioner No.1), Shailesh Kumar Singh (since dead), Ramanuj Singh (Petitioner No.2) and Kumar Rajesh @ Bablu (Petitioner No.3) in conspiracy with each other out of greed for money have sold plot no.169 allotted to his father illegally. Lastly, in his written report, the informant has stated that action may be taken against the accused persons so that the said plot may be registered in the name of his mother Draupadi Devi.

7. After institution of the case, the police investigated the same and on completion of investigation the Investigating Officer of the case submitted police report, vide Charge-sheet No. 52/15 dated 30th March, 2015, in the court of A.C.J.M., Patna City. Having

considered the allegations made in the FIR, the statements of witnesses recorded under Section 161(3) of the CrPC and the police report submitted under Section 173(2) of the CrPC, the learned A.C.J.M., Patna City took cognizance of the offences punishable under Sections 420, 406 and 120-B of the IPC as against the petitioners and summoned them to face trial vide order dated 1st May, 2015.

8. The aforesaid order dated 1st May, 2015 is under challenge in the present application preferred under Section 482 of the CrPC.

9. I have heard learned counsel for the parties and perused the papers on record.

10. The impugned order dated 1st May, 2015 passed by the learned A.C.J.M., Patna City has been challenged before this Court by the learned counsel for the petitioners mainly on the following grounds :

(i) From the minutes of the meeting of the Executive Committee of the Society held on 17th August, 1989, it would be evident that it was decided in the meeting that in view of the increasing demand of the land at Mouza Kurkuri only one plot would be allotted to its members and the allotment of more than one plot to its members was cancelled by the Executive Committee of the Society.

(ii) From the minutes of the meeting of the Executive Committee held on 26th September, 1989, it would be further evident that it was decided at the meeting that plot no. 169 returned by Raghuraj Singh, father of the informant, be allotted to Ramanuj Singh (Petitioner No.2).

(iii) From the photo copy of the Savings Bank Pass Book of Ramanuj Singh (Petitioner No.2) it would be clear that Ramanuj Singh was also a member of the Society and his Account/Registration number was 507 and therefore he was entitled to allotment of a plot at Kurkuri and accordingly an allotment letter was issued to him allotting plot no. 169.

(iv) From the certificate dated 28th July, 1991 issued under the signature of the then Director of the Society, namely, Bishwajeet Gawtia, it would be also evident that Raghuraj Singh, father of the informant Yuvraj Singh had willfully taken back his money i.e. cost of the plot which he had paid but he failed to return the allotment letter/token, probably because after registration of the sale deed in his favour regarding plot no. 170 on 18th July, 1991, he died soon thereafter on 7th August, 1991.

(v) Raghuraj Singh, father of the informant having got back his money from the Society which he had paid for getting plot no. 169 registered in his name, had no grievance against the Society. If he would have any grievance regarding non-registration of plot no.169 in his name and the allotment of the same to Ramanuj Singh (Petitioner No.2), he would have easily approached the Registrar, Co-operative Society for solving the dispute under the Bihar and Orissa Co-operative Societies Act, but he did not do so.

(vi) The learned A.C.J.M. has erred in law in not appreciating the fact that the criminal proceeding has been launched more than 24 years after the death of Raghuraj Singh, father of the informant, just to wage a personal vendetta against the Secretary of the Society and others.

(vii) The learned A.C.J.M. has further erred in not considering the fact that the dispute between the parties is essentially a civil dispute and the ingredients of the offences punishable under Sections 406, 420 and 120-B of the IPC are not attracted as against the petitioners.

(viii) The learned A.C.J.M. also erred in not appreciating the fact that the alleged amount of Rs.16,087/- was deposited by the father of the informant in the account of the Society and it was the Society which had executed the sale deed in favour of petitioner no.2 Ramanuj Singh but the Society has not been made an accused in the case and in its absence, the office bearers cannot be prosecuted in a criminal case as they cannot be held vicariously liable for any offence committed by the Society itself.

(ix) Even going by the allegations made by the informant in the FIR and the statements of the witnesses recorded during investigation, no offence under Sections 406, 420 and 120-B of the IPC is made out against the petitioners.

11. Per contra, learned counsel for the Opposite Party No.2 Yuvraj Singh has contended that the claim of transfer of the plot of original allottee (father of the informant) which involves the Ex-Secretary Shailesh Kumar Singh (since dead), his wife Smt. Veena Singh, a non-member and a close associate of Ex-Secretary of the Society Ramanuj Singh (Petitioner No.2), the Secretary Deepak Kumar Sinha (Petitioner No.1) and the identifier of both the

registered sale deeds dated 6th September, 2011 and 24th March, 2013 Kumar Rajesh @ Bablu (Petitioner No.3), prima facie suggest that they all conspired together in selling the plot of the original allottee for wrongful gain. He has further contended that there is no question of personal vendetta and the delay was caused in launching the criminal prosecution because in the year 2014 when the Opposite Party No.2 and his mother (wife of the original allottee) came to know about the registration of their plot in the name of one Ramanuj Singh (Petitioner No.2) by the Secretary of the Society Deepak Kumar Sinha (Petitioner No.1), an objection was raised before the Registrar, Co-operative Societies and the I. G. Registration, Bihar. He has contended that the minutes of the meeting of the Society dated 26th September, 1989 creates suspicion that when in the final list dated 31st July, 1991 the name of Raghuraj Singh, father of the informant was mentioned, how the said plot was allotted in the name of Ramanuj Singh (Petitioner No.2) in place of original allottee Raghuraj Singh. These materials suggest that some forgery was made in the document which can be looked into during trial by the trial court.

12. Learned counsel for the Opposite Party No.2 has further contended that for redressal of the grievance, the opposite party no.2 and his mother have also filed Title Suit No. 185 of 2015 before the

civil court four months after registration of the police case and the same has been filed when no steps were taken by the I.G. Registration and the Registrar, Co-operative Societies, Bihar on the applications submitted by the Opposite Party No.2.

13. Lastly, it has been contended by the learned counsel for the Opposite Party No.2 that the present case cannot be treated or said to be dispute of purely civil nature in any manner because there are several materials on record to show that the intention of the petitioners were dishonest since beginning. He has contended that the criminal proceedings cannot be thwarted merely because civil proceedings are pending and should not be quashed merely because of pendency of civil proceedings between the parties.

14. Having considered the submissions of the learned counsel for the parties, what is important in the present case is that the father of the informant, namely, Raghuraj Singh was an employee of the Reserve Bank of India, Gandhi Maidan, Patna. He was one of the members of the Society in question, which was registered under the Society Registration Act, 1860. The Society had purchased lands at Mouza Kurkuri and allotted the same to its members. In the said allotment, Raghuraj Singh was allotted two plots, i.e. Plots No. 169 and 170 each measuring 2000 sq ft. The said allotments were made on 27th June, 1989 for Rs.16,087/- each. According to the demand of

the then General Secretary of the Society, the father of the informant had deposited price of both the plots. Thereafter, the Society executed a registered sale deed relating to Plot no.170 in the name of his father on 18th July, 1991. The allegation is that the Society failed to register the other plot i.e. Plot No.169 due to some reason.

15. It is an admitted fact that the father of the informant died on 7th August, 1991. The contention of the informant is that in spite of request being made, the Society and its officials failed to execute the sale deed in respect of plot no. 169 either in his favour or in favour of his mother and dishonestly the said plot was sold to the petitioner no.2 Ramanuj Singh by the Society through the then General Secretary Deepak Kumar Sinha (Petitioner No.1).

16. On the other hand, referring to the minutes of the meeting of the Executive Committee of the Society held on different dates including 17th August, 1989 and 26th September, 1989, the petitioners have submitted that in the minutes of the meeting of the Executive Committee dated 17th August, 1989 it was decided that in view of the increasing demand of the land at Mauza Kurkuri only one plot would be allotted to its members and allotment of more than one plot to its members was cancelled. It was also decided in the meeting of the Executive Committee held on 26th September, 1989 that plot no.169 returned by Raghuraj Singh, father of the informant be

allotted to Ramanuj Singh (Petitioner No.2), who was also a member of the Society and his Account Number was 507 and therefore, he was entitled to allotment of a plot at Kurkuri and accordingly allotment letter was issued to him allotting him plot no. 169.

17. Referring to the certificate dated 28th July, 1991 issued under the signature of the then Director of the Society, it has been submitted that Raghuraj Singh, father of the informant Yuvraj Singh had willfully taken back his money i.e. cost of the plot which he had paid.

18. Even otherwise, it is not disputed that the allotment of plot no. 169 was made in the name of the father of the informant, who died way back on 7th August, 1991. It is also not disputed that neither the sale deed was executed in the name of his father during his life time nor the informant or his mother took any steps in this regard before filing of the present FIR. The issue, in question, has been raised by the informant, who is not even a member of the Society, after a long gap of over 24 years.

19. When I look to the sale deed dated 6th September, 2011, as contained in Annexure-A to the counter affidavit filed on behalf of the Opposite Party No.2, it would be evident that the deed of absolute sale was executed by the Society in question in favour of the Petitioner No.2, meaning thereby, that the Society was the vendor

whereas Petitioner No.2 Ramanuj Singh was the vendee of the plot in question. It is true that the sale deed in question discloses that the Petitioner No.1 Deepak Kumar Sinha had signed the deed in the capacity of General Secretary of the Society.

20. It is also an admitted fact that four months after instituting the complaint, the informant and his mother Mostt. Draupadi Devi had filed Title Suit No.185 of 2015 in the court of Munsif-I, Patna. A copy of the plaint of Title Suit No.185 of 2015 has been brought on record as Annexure-8 to the present application filed under Section 482 of the CrPC. The cause title of the aforesaid title suit would make it evident that the Society in question has been impleaded as Defendant No.1 through its General Secretary Deepak Kumar Sinha (Petitioner No.1). It would be pertinent to note the averments made by the plaintiffs in paragraph 10 of the plaint of the aforesaid Title Suit, which reads as under :-

> "10. That some time in last month of 2013 the plaintiff got knowledge that <u>the society executed and registered the sale deed of society plot no.169 in favour of Ramanuj Singh defendant no.3 who was neither member of society nor he ever (sic) any application for allotment of said society plot in his favour and the execution and registration of sale deed for the land of society plot no.169 is void, illegal, fraudulent</u> and no title and possession passed in defendant no.3 Ram Anuj Singh by such illegal and fraudulent document. …"
>
> (underlining mine)

21. The reliefs prayed for in the aforesaid title suit read as under :

"a. That on adjudication of facts and law as stated above <u>the sale deed dated 06/09/2011 executed and registered by the society with regard to society plot no. 169 in favour of Ram Anuj Singh, the details whereof are given at the foot of the plaint in schedule 1 be declared illegal, void abinitio</u> and no title and possession passed in defendant no.3 and defendant no.6 on the basis of sale deed executed by Ram Anuj Singh in favour of defendant no.6 Sanjeev Kumar with regard to portion of society plot no.169 area 1000 square feet details whereof given in schedule II to the plaints is also illegal, void.

b. That on grant of relief no.1 defendant no. 1 and 2 be directed to execute and register sale deed with respect to society plot no.169 in favour of plaintiffs as heirs of deceased Raghu Raj Singh as per allotment letter issued to him on 27/06/1989.

c. That the defendants be restrained by issuing temporary injunction from alienating the suit properties by any of mode or changing the nature in the same during pendency of suit.

d. That the cost of suit be also awarded in favour of the plaintiffs against the defendants.

e. To other relief or reliefs be also granted to the plaintiffs as entitled."

(underlining mine)

22. It is pertinent to note here that it is an admitted fact that the Society in question is registered under the Societies Registration Act, 1860. The registration gives the Society a legal status. When the Society is registered, it and its members become bound to such extent as if each member had signed the memorandum. All Societies registered under the Societies Registration Act enjoy the status of legal entity apart from the members constituting it. Every registered Society, being a legal entity, is capable to acquire and hold the property and it can sue and be sued. There is no concept of partnership or ownership in case of a registered Society. There may be Executive Committee and the office bearers may be from amongst the members of the Society. However, a Society registered under the Societies Registration Act is not a body-corporate as in the case in respect of a Company registered under the Companies Act. In that view of the matter, a Society is not a juristic person. It is to be sued in the name of such person as shall be appointed by the Governing Body such as President, Chairman, Secretary or Trustees. A registered Society may not be prosecuted in criminal court and that itself cannot be a ground to hold prosecution of its General Secretary to be bad.

23. However, what is of importance in the present case is that the sale deed, in question, is registered one and has not been declared null and void by any court of law.

24. Further, it is needless to say that before a person can be said to have committed criminal breach of trust within the meaning of Section 406 of the IPC, it must be established that he was either entrusted with the property or entrusted with dominion over the property, which he is said to have converted for his own use. It must be further shown that such dominion was the result of entrustment. The act of breach of trust per se may involve a civil wrong but a breach of trust with an ingredient of mens rea would give rise to criminal prosecution. The basic requirements to bring home accusation under Section 406 of the IPC are the requirements to prove that the accused was entrusted with the property and he dishonestly used or disposed of that property.

25. As noted above, the Society is registered under the Societies Registration Act, 1860, having right to sue and liability to be sued. There is nothing on record on the basis of which it can be said that the petitioners dishonestly converted the amount deposited by the father of the informant for his own use so as to satisfy the ingredients of Section 406 of the IPC.

26. From the averments made in the FIR as also from the materials on record, I find that there is vague and bald allegation that the accused persons with dishonest intention in conspiracy with each other have sold plot no. 169 allotted to the father of the informant.

The last two lines of the written report submitted by the informant, which is in Hindi and which is of extreme importance, are quoted as under :-

> "मेरी वृद्धा माँ द्रौपदी देवी के नाम से प्लॉट न० 169 की रजिस्ट्री कराने की दिशा मैं कारवाई कर हमें न्याय दिलाने की कृपा करें।"

(English Translation)

> (An appropriate step may be taken so that said plot no.169 may be registered in the name of my old mother Draupadi Devi.)

27. From the above contention made in the written report, it would be apparent that the prime concern of the informant is that the plot in question i.e. plot no.169 be registered in the name of his mother. It is pertinent to note here that for the aforesaid relief, the aggrieved party has to approach the civil court for cancellation of the sale deed executed in favour of petitioner no.2 Ramanuj Singh. As already noted above, the informant along with his mother Mostt. Draupadi Devi has already taken steps in this regard by filing Title Suit No. 185 of 2015 before the court of Munsif, Patna.

28. As far as the offence of cheating is concerned, the same is defined under Section 415 of the IPC for which punishment is provided under Section 420 of the IPC. Section 415 of the IPC 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**"."

29. From the above language of the Section, it would be evident that the offence of cheating is made of two ingredients; (i) deception of any person; (ii) fraudulently or dishonestly inducing any person to deliver a property to any person or persons to retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such persons acted on such inducement in consequence of his having deceived by the accused acted fraudulently or dishonestly when so inducing the person.

30. In ***Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr., [(2000) 4 SCC 168],*** in paragraph 15, the Supreme Court observed as under :-

> "**15.** In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless

> fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

31. In ***Murari Lal Gupta Vs. Gopi Singh, [(2006) 2 SCC (Cri) 430]***, the Supreme Court quashed the criminal complaint instituted under Sections 406 and 420 of the IPC on the following analysis :

> "The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurize the petitioner for coming to terms with the respondent."

32. From the aforesaid decisions, it is quite clear that unless there is an allegation that there was intention to deceive right from the

beginning or dishonest intention having been made by the accused pursuant to which the complainant parted with the money, the offences punishable under Sections 406 and 420 of the IPC would not be attracted.

33. The facts of the present case clearly suggest that the informant was never deceived nor he or anyone else was induced to deliver the property. What was done was so reflected in the resolution and minutes of the Executive Committee of the Society and the sale deed in question.

34. Here, in the present case, it is not the case of the informant that the plot in question was not the property of the Society or that the petitioner no.1 Deepak Kumar Sinha in the capacity of the General Secretary of the Society was not competent to sell the plot or could not have transferred the title in the property to the petitioner no.2 Ramanuj Singh. Merely because initial allotment of the plot in question was made in the name of the father of the informant on 27th June, 1989 by the Society, which was subsequently cancelled by the Society and further allotment of the said plot was made in the name of another member of the Society (Petitioner No.2) and the same was ultimately transferred in his name by executing the sale deed, it cannot be said that the petitioners have cheated the informant.

35. As far as the offence of criminal conspiracy for which

punishment is prescribed under Section 120-B of the IPC is concerned, the ingredients of the criminal conspiracy are that there should be an agreement between the persons who are alleged to have conspired and the said agreement should be for the doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Here, in the present case, execution of sale deed by the Society through its General Secretary in favour of one of its members for consideration cannot be termed to be an illegal act or an act done by illegal means. Hence, in the opinion of this Court, the offence punishable under Section 120-B of the IPC is also not attracted in the present case.

36. Regard being had to the facts of the present case, this Court has no doubt in its mind that the dispute raised in the present case is essentially and purely a dispute of civil nature.

37. In that view of the matter, the institution of a criminal case against the petitioners and taking cognizance of the offences mentioned above, vide impugned order dated 1st May, 2015, is clearly an abuse of the process of the court.

38. Accordingly, the impugned order dated 1st May, 2015 passed by the learned A.C.J.M., Patna City in G.R. No. 330 of 2015 arising out of Gandhi Maidan P.S.Case No. 18 of 2015 summoning the petitioners to face prosecution for the offences punishable under

Sections 406, 420 and 120-B of the Indian Penal Code is, hereby, quashed.

39. The application stands allowed.

(Ashwani Kumar Singh, J)

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