

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21957 of 2014

**Arising Out of PS.Case No. -1921 Year- 2013
Thana -PATNA COMPLAINT CASE District- PATNA**

=====

Ashok Kumar Singh Son of Late Satyadeo Singh Resident of Village - Sri Nagar,
Police Station Tharthari, district Nalanda at present resident of Professor Colony
Dhaneshwar Ghat, Police Station Biharsharif, District - Nalanda

.... Petitioner

Versus

1. The State of Bihar
2. Rabindra Prasad Singh Son of Late Bhola Singh Resident of Village + P.O.
Gosaimath, Police Station - Harnaut, District - Nalanda at present residing at
L.I.G. 9/299, Hanuman Nagar, Police Station Patrakar Nagar, District - Patna

.... Opposite Parties

=====

Appearance :

For the Petitioner : Mr. Jai Prakash Singh, Advocate
Mr. Arnil Kumar Singh, Advocate
For the State : Ms Renu Kumari, APP

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date: 08-11-2017

Heard the parties.

The petitioner seeks quashing of the order dated 21.10.2013, passed by the Court of learned Judicial Magistrate, Patna in Complaint Case No. 1921 (C)/ 2013, whereby the court below has taken cognizance for the offence under Section 406 of the Indian Penal Code (herein after referred to as 'the IPC').

The Complainant alleges that an agreement dated 04.3.2012 had been entered into between the petitioner and the complainant for selling a piece of land measuring an area 2250 sq.ft, plot no. 2M/35 situated at Bahadurpur, Patna for Rs. 35 lacs and one thousand, subject to clearance from the Housing Board. It is alleged



that at the time of agreement, Rs. 1,51,000/- was paid to the petitioner and thereafter Rs. 5 lacs and 1 lac was also paid to him on 9.4.2012 & 26.6.2012 respectively by way of a bank draft and cheque. Further allegation of the complainant is that on his failure to execute the sale deed in his favour, a legal notice against the petitioner was issued, to which the petitioner agreed to return Rs. 7, 51,000/-. As the petitioner failed to return the said amount, informant lodged instant complaint against the petitioner under Sections 406, 420 and 120 (B) of the IPC and accordingly, cognizance has been taken by the Court below. Paragraph 4 of the complaint case reads as follows:-

“That instead of cheating the Accused No. 1 gave legal notice on 29.04.2013 to the Complainant and the complainant replied the same on 03.05.2013 through speed-post giving full details of the fact mentioned therein thereafter the accused replied the same on 17.05. 2013 accepting the receipt of payment of Rs. 7, 51,000/- and agree to receive the same amount from the accused persons, thereafter the complainant replied the accused to send the said amount either through Bank Draft or through deposit in account of the complainant bearing No. 20010960775 of S.B.I. but till date nothing has been sent to the complainant.”

Counsel for the petitioner submits that the complaint had been lodged abusing the process of the criminal court for recovery of the amount of Rs.7, 57, 000/-. He has filed a supplementary affidavit bringing on record order dated 4.6.2015, passed by the Sub-Judge



XI, Patna in Complaint Case No.1921(C)/2013 from which it is evident that on receipt of Rs.7, 51,000/- through bank draft no. 673653 issued in the name of Ravindra Prasad Singh, no objection certificate has already been issued to the petitioner by the complainant.

Notice was earlier issued to Opposite Party No. 2 by order dated 17.07.2017 passed in this case whereby further proceedings in the court below had been stayed. The Process server has reported that the notice on Opposite Party No. 2 was received by his counsel appearing in the court below. In view of the said position, the notice has been treated as validly served vide order dated 13.09.2017 in the instant case. In spite of such valid notice, the complainant/Opposite Party has chosen not to appear in the case to contest or to deny the assertion made by the petitioner on the basis of the said order dated 4.6.2015 of the Court below.

Having considered the aforesaid position, it also appears that the allegations in the complaint are predominantly civil in nature. The complainant, in paragraph- 2 has stated that the agreement between the parties was contingent, which would be enforceable after clearance from the Housing Board. Paragraph 2 of the complaint reads as follows:-

“That the agreement for sale in between the Complainant and accused dated 04.03.2012 contains several conditions of payment and finally registration of the sale deed



was to be made after clearance from the Housing Board, Patna as the said plot was allotted to the father of the accused No. 1, Satyadeo Singh from the Housing Board.”

What appears from the complaint is that the agreement for sale itself was contingent upon clearance from the Housing Board. The complaint however does not disclose that such clearance/permission was ever granted by the Housing Board. That being the position, mere failure to register the land in favour of the complaint cannot constitute any criminal offence even if the uncontroverted allegations made in the complaint are taken to be true. None of the essential ingredients of an offence under section 420 IPC are to be found in the complaint as no dishonest inducement can be made out.

Regard being had to the facts and circumstances and the discussions made above, it would be apt to refer to the decisions of the Apex court in the case of **S.W.Palanitkar and others Vs. State of Bihar and another**, reported in Judgment **2001(4) Suppl. SCR 397** and the subsequent judgment which hold good even today. In that case also, the allegations made in the complaint/FIR did not constitute the essential ingredients of the offence under sections 406 and 420 IPC against one of the accused persons. In paragraph 15 of the said judgment, the Apex court has laid down as follows:-

“Many a times, complaints are filed under [Section 200](#) Cr.P.C. by the parties with an oblique motive or for collateral purposes to harass, to wreck vengeance, pressurize the accused to bring them to their own terms or to enforce the obligations arising out of breach of contract



touching commercial transactions instead of approaching civil courts with a view to realize money at the earliest. It is also to be kept in mind that when parties commit a wrongful act constituting a criminal offence satisfying necessary ingredients of an offence, they cannot be allowed to walk away with an impression that no action could be taken against them on criminal side. A wrongful or illegal act such as criminal breach of trust, misappropriation, cheating or defamation may give rise to action both on civil as well as on criminal side when it is clear from the complaint and sworn statements that necessary ingredients of constituting an offence are made out. May be parties are entitled to proceed on civil side only in a given situation in the absence of an act constituting an offence but not to proceed against the accused in a criminal prosecution. Hence before issuing a process a Magistrate has to essentially keep in mind the scheme contained in the provisions of [Section 200-203](#) of Cr.P.C. keeping in mind the position of law stated above and pass an order judiciously and not mechanically or in routine manner.”

In the case in hand as noticed above, no offence under section 420 IPC is made out on a bare reading of the uncontroverted allegations made in the complaint. The complainant has already placed on record the receipt of the amount of Rs.7,50,000/- in the bail proceedings, which has been claimed by way of the complaint case.

Thus, having regard to the facts and circumstances of the case and the discussions made above, order dated 21.10.2013, passed in Complaint case no. 1921 (C) of 2013, pending in the Court of Sri Krishna Gopal, the Judicial magistrate, Patna, whereby the cognizance of the offence under sections 420 and 120B IPC has



been taken, is set aside and the entire criminal proceeding arising out
the aforesaid complaint case is quashed.

Sudha

(Madhuresh Prasad, J)

AFR/NAFR	
CAV DATE	
Uploading Date	18.11.2017
Transmission Date	18.11.2017

