IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30421 of 2013

Arising Out of PS.Case No. -560 Year- 2012 Thana -NALANDA COMPLAINT CASE District- NALANDA (BIHARSHARIFF)

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1. Dilip Kumar Kochar S/o Late Bulaki Chand Kochar Resident of Constantia, 7th Floor, 11, Dr. U.N. Brahmachari Street, Kolkata
2. B. Subramanium Sastri S/o Late B. Shankar Sastri Resident of 501, A.T. Centre, Amirpet, Hydrabad
3. Avani Kant Jha S/o Sri Saryu Kant Jha, Resident of Banke Bihari Sadan, Sahdeo Mahto Marg, P.S.- Srikrishnapuri, Town And District- Patna

.... Petitioners

Versus

1. The State of Bihar
2. Sukhdeo Mallah @ Sukhdeo Kewat @ Lavkush Kewat S/o Late Rama Mallah Resident of Village- Sukiyawan, P.S.- Hulasganj, District- Jehanabad, at present Resident of Village- Chauki Hurari, P.S.- Karai Parsurai, District- Nalanda

.... Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Senior Advocate
		Mr. Rajesh Ranjan, Advocate
For the State	:	Mr. Narsingh Tanti, APP
For the Opposite Party No.2:		Mr. Sudhir Kumar Upadhayay, Advocate
		Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-04-2017

Heard Mr. Chitranjan Sinha, learned Senior Advocate for the petitioners and Mr. Sanjay Kumar, learned Advocate for the opposite party no.2.

2. The present application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for quashing of the entire criminal proceedings arising out of Complaint Case No. C-560 of 2012 including the order dated 21.11.2012 passed by the learned Judicial Magistrate 1st Class, Hilsa whereby the petitioners have been summoned to face trial for the offences punishable under Sections 420 and 120-B of the Indian Penal Code.

3. The complainant-opposite party no.2 filed the present complaint alleging therein that he is the owner of a piece of land bearing Khata No. 32, Khesra No. 182 having an area of 14 decimal in the village Chauki Hurari under Karai Parusarai police station in the district of Nalanda. The said land was gifted to the complainant-opposite party no.2 by her maternal grandmother by a deed of gift dated 25.11.1953. It is alleged that the accused persons proposed to buy the said land for the purpose of establishing a cement factory of Ultratech Cement Ltd. (for short 'the company'). After negotiation, the consideration amount was fixed at Rs. 268800/- out of which Rs. 26880/- was paid by way of advance at the time agreement. It is alleged that at the time of registration of the sale deed on 24.12.2011 the accused persons assured the complainant to pay the remaining amount through cheque after his

acceptance before the Registrar. The opposite party no.2 after the registration demanded the cheque but the accused persons refused to give the cheque. Thereafter, the opposite party no.2 sent a legal notice calling for the payment of the remaining amount which was not replied in proper manner and, finally, the accused persons refused to pay the said amount on 1st July, 2012. The opposite party no.2 alleged that the accused persons have cheated him by giving him false assurance.

4. The complainant was examined on oath and, besides him, four other witnesses were examined during inquiry conducted under Section 202 of the Cr.P.C. before the court of learned Magistrate. Thereafter, vide order dated 21.11.2012, the learned Magistrate summoned the petitioners finding a prima facie case to be made out under Sections 420 and 120-B of the Indian Penal Code.

5. The aforesaid order dated 21.11.2012 is under challenge in the present application.

6. It is submitted by Mr. Chitranjan Sinha, learned Senior Advocate appearing for the petitioners that M/s Ultratech Cement Ltd. is a company registered under the Indian Companies Act, 1956. The aforesaid company is the biggest cement manufacturer in India. The petitioners are authorized signatories of

the company for the purpose of land acquisition. He submitted that for the purpose of setting up a plant of cement grinding, the company identified village Shahjehanpur in the district of Patna and its adjoining village Hurari in the district of Nalanda. The petitioners were authorized by the company to act on its behalf for the purpose of land acquisition in the villages Shahjehanpur and Hurari. After obtaining the necessary permissions from the different departments of the State Government including the Industry Department and the Pollution Control Board, the company began the land acquisition from the farmers. It acquired about 100 acres of land for the said purpose. In the process of acquisition, the opposite party no.2 approached the petitioners for sale of his land having Khata No.32, Khesra No.182 area 14 decimal situated in village Hurari to the company. He claimed title over the said land on the basis of a deed of gift dated 25.11.1953 executed in his favour by one Mahangi Devi stated to be his maternal grandmother. Believing upon his statement, the company entered into an agreement for sale dated 24.12.2011 for purchase of the above mentioned plot. A sum of Rs.26880/- was paid to the opposite party no.2 through account payee cheque by way of advance.

7. Mr. Chitranjan Sinha, learned Senior Advocate submitted that at the time of execution of the agreement for sale, the

representative of the company had asked the opposite party no.2 to produce his identity proof but he did not produce the same on the pretext that his voter identity card has been misplaced. Thereafter, on 24.12.2011 he produced his identity card in the office of the Registrar, Hilsa wherein his name was shown as Lavkush Kewat and the date of birth was mentioned as 1963. This caused suspicion regarding the identity of opposite party no.2 and, therefore, he was asked to produce other supporting documents. The opposite party no.2 sought some time to produce the same but he never produced any supportive document in order to corroborate the fact that his name was Sukhdeo Mallah @ Sukhdeo Kewat @ Lavkush Kewat. He submitted that after receipt of legal notice from the opposite party no.2, a reply was sent on 19.06.2012 in which the company had expressed its willingness to pay the remaining amount only when the opposite party no. 2 would produce authentic documents in support of his identity as Sukhdeo Mallah.

8. Learned Senior Advocate submitted that later on the company came to know that the mother of Sukhdev Mallah namely Bedamo Kunwar had already sold the said piece of land to one Mahngu Mahto and Ram Prasad Mahto through a registered deed of sale dated 09.01.1967. The said sale deed was executed by Bedamo Kunwar on behalf of her minor son Sukhdeo Mallah. The

vendees after purchase of the said land came into peaceful possession of the same. He submitted that opposite party no.2 was well aware of the said transaction as he had instituted a proceeding under Section 144 of the Cr.P.C. in the court of Sub Divisional Magistrate, Hilsa in the year 1995 against the legal heirs of the above said vendee Mahngu Mahto and Ram Prasad Mahto. The said proceeding was disposed of by order dated 11.07.1995 passed by the Sub Divisional Magistrate, Hilsa.

9. On the basis of these submissions, learned Senior Advocate appearing for the petitioner submitted that the opposite party no.2 had willfully and deliberately presented himself as Sukhdeo Mallah to cheat the company and tried to sell the land which was already sold to some other person. He submitted that the non-payment of consideration amount has already vitiated the sale deed executed by the opposite party no.2 as the company had not claimed any benefit of the said sale deed. He submitted that the order impugned is also vitiated because the petitioners have been made accused merely on the basis of their employment with the company but surprisingly enough the company itself in whose favour sale deed in question has been executed has not been made an accused in the present complaint.

10. *Per contra,* Mr. Sanjay Kumar, learned

Advocate for the opposite party no.2 submitted that the allegations made in the complaint do attract the ingredients of the offence punishable under Section 420 of the Indian Penal Code and since the petitioners conspired together in order to cheat the complainant-opposite party no.2, they have rightly been summoned under Section 420 read with 120-B of the Indian Penal Code. He submitted that the complainant has fully supported the allegation made in the complaint while being examined on oath and, besides the complainant, four inquiry witnesses have also corroborated the allegations made in the complaint. He contended that at the stage of taking cognizance of the offence, the defence of the accused is not to be considered. The defence taken by the petitioners can only be considered at an appropriate stage during trial. He contended that though the sale deed has been executed in favour of the company, it was the petitioners who had negotiated with the complainant and, hence, they are liable to be prosecuted even in absence of the company.

11. I have heard learned counsel for the parties and carefully perused the record.

12. The issue under consideration is as to whether on the basis of the materials available on record the learned Magistrate was justified in summoning the accused persons for the

offences punishable under Sections 420 and 120-B of the Indian Penal Code.

13. In order to examine the issue, at this stage, I would like to refer to Section 420 of the Indian Penal Code which 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."

14. At this stage, it would also be apposite to refer to Section 415 of the Indian Penal Code 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"**."

15. From a conjoint reading of Sections 420 and 415 of the Indian Penal Code, it would be evident that the essential ingredients of the offence of cheating punishable under Section 420 of the Indian Penal Code are as under:-

> (i) The deception of person either by making a false or misleading representation or by dishonest concealment or by any other act of omission;
>
> (ii) Fraudulent or dishonest inducement of that person to either deliver any property or to consent to retention or intention to induce that person to do or omit to do anything which he would not do or omit if he were not so deceived; and
>
> (iii) Such act of omission causing or is likely to cause damage or harm to the person in body, mind, reputation or property.

16. In **State of Kerala vs. A. Pareed Pillai & Anr. [(1972) 3 SCC 661],** the Supreme Court held: *"to hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not*

subsequently fulfil the promise".

17. In **G.V. Rao vs. L.H.V. Prasad & ors. [(2000) 3 SCC 693],** the Supreme Court held: *"As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional".*

18. In **Jaswantrai Manilal Akhaney vs. State of Bombay** [AIR 1956 SC 575], the Supreme Court held: *"a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established".*

19. In **Mahadeo Prasad vs. State of West Bengal [AIR 1954 SC 724]**, the Supreme Court held that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered".

20. In **S.W. Palanitkar and Ors.** vs. **State of Bihar and Anr. [(2002) 1 SCC 241]**, the Supreme Court laid down that: *"... In order to constitute an offence of cheating, the intention to*

deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating".

21. Thus, in view of the allegations made, when I look to the offence of cheating and the ratio land down in the decisions noted above, I find that the complainant has not alleged that the accused persons had any dishonest intention right from the beginning or that they fraudulently or dishonestly induced him to deliver the property by making false representation. On the contrary, the complainant has stated that after negotiation the consideration amount was fixed at Rs.2,68,800/- out of which Rs. 26,880/- was paid by the accused persons by way of advance at the time of agreement itself.

22. The gist of the offence of cheating i.e., a dishonest intention to deceive at the time when inducement was made is apparently missing in the present case. Hence, the mere failure to keep up the promise subsequently by not paying the remaining amount of consideration can not be presumed as an act leading to cheating.

23. The only other Section under which the cognizance has been taken is section 120-B of the Indian Penal Code. Section 120-B of the Indian Penal Code prescribes punishment of criminal conspiracy which is defined under Section 120-A of the Indian Penal Code. It reads as under:-

> "**120-A. Definition of criminal conspiracy.- When two ore more persons agree to do, or cause to be done,-**
>
> (1) an illegal act, or
>
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof".

24. From a bare reading of the definition of criminal conspiracy, it would be evident that the essential ingredient of criminal conspiracy is the agreement to commit an illegal act or an act which is not illegal by illegal means.

25. To bring home the charge of conspiracy within the

ambit of Section 120-B of the Indian Penal Code, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. The role played by the petitioners in the present case is that they negotiated with the complainant for the purchase of a piece of plot on behalf of the company.

26. By no stretch of imagination, the said act on the part of the petitioners can be said to be an agreement between to the accused persons for doing an unlawful act. In the opinion of this Court, the ingredients of the offence of criminal conspiracy are completely missing in the present case.

27. The case of the petitioners is that at the time of execution of the sale deed conveying the property claiming ownership thereto, the petitioners suspected that the complainant was cheating them by making a false representation of ownership and fraudulently induced them to part with the consideration amount.

28. Under such circumstances, if the petitioners decided not to handover the consideration amount to the complainant and called the petitioners to prove his identity as Sukhdeo Mallah, it cannot be said that the petitioners in any way conspired together to cheat the complainant.

29. Moreover, it would be evident from the reading of the complaint that no allegation has been levelled against the petitioners for their personal involvement in the present case. They have been made accused merely on the basis of their employment with the company.

30. Mr. Chitranjan Sinah, learned Senior Advocate appearing for the petitioners has rightly submitted that the criminal liability of the company cannot be fastened upon employees of the company in absence of the company itself being made an accused.

31. In this regard, it may be useful to refer to the decision of the Supreme Court in **R. Kalyani vs. Janak C. Mehta & Ors. [(2009) 1 SCC 516]** wherein it is held that when a person is sought to be prosecuted on the ground that he is vicariously liable for the affairs of the company, it is necessary that the company is also impleaded as an accused. Such legal fiction is raised both against the company as well as against the person responsible for the acts of the company.

32. In **S. K. Alagh vs. State of UP** [**(2008) 5 SCC 662]** the Supreme Court held in paragraph 19 as under:

> "19. As admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to

> have committed an offence under section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, if provides, specifically therefore. In absence of any provision laid down under the statute a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself."

33. Taking into consideration the ratio land down in the aforesaid decisions of the Supreme Court, the prosecution of the petitioners being vicariously liable for a transaction which was made in favour of the company by the complainant without making the company an accused cannot be justified.

34. Learned Senior Advocate for the petitioners is also right in his submission that non-payment of consideration amount has vitiated the sale deed executed by the opposite party no.2 as the company has not claimed any benefit on the basis of the said sale deed and the opposite party no.2 has not suffered any loss.

35. I am also of the view that the dispute between the parties, if any, is essentially of a civil nature. The prosecution of the petitioners by instituting a criminal case is apparently an abuse of the process of the Court.

36. For the reasons afore-stated, the complaint Case

No. C-560 of 2012 pending before the learned Judicial Magistrate 1st Class, Hilsa and all the proceedings arising therefrom are hereby quashed.

37. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
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Transmission Date	17.04.2017