

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45519 of 2013

Arising Out of PS.Case No. -31 Year- 2013 Thana -PIRBAHOR District- PATNA

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1. Saifullah Khalid
 2. Athar Shamim
 3. Nadir Quiser
 4. Babar Qaiser
 5. Tarique Qaiser

All sons of Late Md. Abdullah Qaiser, resident of Mohalla- Shahganj, Post Office-Mahendru, Police Station- Sultangaj, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Saleem Raza son of Md. Naseem, resident of Mohalla- Dariyapur Bari Road, Post Office- Bankipur, Police Station- Pirbahore, District- Patna.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 53326 of 2013

Arising Out of PS.Case No. -31 Year- 2013 Thana -PIRBAHOR District- PATNA

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1. Md. Kalam Anwar son of Late Hafiz Imam Ali, resident of village - Sabji Bagh Dariyapur Road, Police Station - Pirbahore, District - Patna
 2. Md. Nezamuddin son of Hafiz Imam Ali, resident of village - Darji Tola, P.S.- Pirbahore, District - Patna
 3. Md. Ekram son of Late Haji Gulam Mohammad, resident of village – Qutubuddin Lane, P.S.- Pirbahore, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Saleem Raja son of Md. Nasim, resident of Mohalla - Dariyapur, P.S.- Pirbahore, District - Patna

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.45519 of 2013)

For the Petitioner/s : Mr. N.K.Agrawal, Sr. Advocate
: Mr. Syed Maslehuddin Ashraf, Advocate
For the Opposite Party/s : Mr. Ajay Kumar Thakur, Sr. Advocate
: Mr. Dhananjay Kumar, Advocate
For the State : Mr. Dilip Kumar, A.P.P.

(In Cr.Misc. No.53326 of 2013)

For the Petitioner/s : Mr. Shakil Ahmad Khan, Advocate
For the Opposite Party/s : Mr. Sanjeet Kumar, Advocate
For the State : Mr. Raj Ballabh Singh, A.P.P.



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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 17-05-2017

The order under challenge in these two applications filed under Section 482 of the Code of Criminal Procedure (for short 'CrPC') is dated 08.09.2013 passed in Pirbahore P.S. Case No.31 of 2013 by the learned Judicial Magistrate, 1st Class, Patna by which the learned Magistrate has summoned the petitioners of these applications after taking cognizance of the offences punishable under Sections 420 and 406/34 of the Indian Penal Code (for short 'the Penal Code').

2. Since a common order is under challenge in these two cases, they have been heard together and are being disposed of by a common order.

3. Heard Mr.N.K.Agrawal, learned Senior Advocate and Mr.Shakil Ahmad Khan learned Advocate for the petitioners, Mr. Ajay Kumar Thakur and Mr.Sanjeet Kumar, Advocate for the informant and Mr. Dilip Kumar and Mr. Raj Ballabh Singh, learned Additional Public Prosecutor for the State.

4. Initially a complaint, vide Complaint Case No.160(c) of 2013 was filed on 18.01.2013 by the informant opposite party no.2 before the learned Chief Judicial Magistrate, Patna which was referred to the police under Section 156(3) of the CrPC for investigation pursuant to which Pirbahore P.S. Case No.31 of 2013 dated



24.01.2013 was registered under Sections 420 and 406 of the Penal Code against the petitioners and investigation was taken up.

5. The prosecution case, in brief, is that the petitioners in Cr. Misc. No.45519 of 2013, namely, Saifullah Khalid, Athar Shamim, Nadir Qaiser, Babar Qaiser and Tarique Qaiser agreed to sell a piece of land to the informant for a total consideration amount of rupees sixty six lakh fifty thousand. The informant paid a sum of rupees thirty five lakh seventy five thousand as advance pursuant to which an agreement to sell dated 20.06.2011 was prepared in favour of the informant but the said land was subsequently sold to other persons.

6. On completion of investigation, the investigating officer submitted charge-sheet on 31.07.2013 against the petitioners of these two cases under Sections 420 and 406/34 of the Penal Code.

7. On perusal of the FIR, the materials collected in course of investigation including statement of witnesses recorded under Section 161(3) of the CrPC and the police report submitted under Section 173(2) of the CrPC, the learned Chief Judicial Magistrate vide impugned order dated 08.09.2013 took cognizance of the offence and summoned the petitioners to face trial. It would be evident from the record that the petitioners in Cr.Misc. No.53326 of 2013, namely, Md. Kalam Anwar, Md. Nezamuddin and Md. Ekram are the persons to



whom the petitioners of Cr.Misc. No.45519 of 2013 had subsequently sold the land in question after entering into an agreement to sell with the informant of the case.

8. It is submitted by Mr. N.K.Agrwal, learned Senior Advocate appearing in Cr. Misc. No.45519 of 2013 that the complaint is an abuse of the process of the court as none of the ingredients of the offences punishable under Section 420 or 406 of the Penal Code are attracted. He contended that it is not the case of the informant that the petitioners did not own and possess the property or that they are not competent to enter into an agreement to sell or could not have transferred title in property to the informant. He contended that simply 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. In support of his submission he placed reliance on the decisions of the Hon'ble Supreme Court in ***Murari Lal Gupta vs. Gopi Singh, [(2005)13 SCC 699]*** and ***Dalip Kaur and Others vs. Jagnar Singh and Another [(2009)14 SCC 696]***.

9. He contended that from perusal of the complaint it would be evident that in compliance of the condition of the agreement to sell dated 22.06.2011, the petitioners handed over possession of the property to the informant and his brother, which goes to show that the intent of the petitioners at the inception of transaction was bona fide.



He contended that since the informant failed to pay the rest amount within the stipulated period, the petitioners sold the land in favour of co-accused Md. Kalam Anwar, Md. Nezamuddin and Md. Ekram, which act of the petitioners would not attract the ingredients of the offences alleged.

10. Mr. Shakeel Ahmad Khan, learned counsel appearing on behalf of the petitioners in Cr. Misc. No.53326 of 2013 submitted that even if the entire allegations are accepted to be true, no offence is made out against the petitioners. He contended that there is no assertion in the entire complaint that the petitioners ever tried to deceive the informant either by making a false or misleading representation or by any other action or omission. He contended that if the sale deed is executed conveying a property claiming ownership over it after receipt of the sale consideration from the purchaser by no stretch of imagination it can be said that the purchaser has either committed any breach of trust or cheated any one.

11. Per contra, Mr. Ajay Kumar Thakur and Mr. Sanjeet Kumar learned Advocates appearing on behalf of the informant submitted that it is an admitted case of the parties that pursuant to an agreement entered into between the parties, the informant paid a sum of rupees thirty five lakh seventy five thousand, but subsequently the land was transferred by the land owner in favour of some other



purchasers. He contended that such an allegation would certainly attract the ingredients of the offences punishable under Sections 420 and 406/34 of the Penal Code. He contended that a given set of fact may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant that itself cannot be a ground to quash a criminal proceeding. In support of his submission he placed reliance on the decision of the Hon'ble Supreme Court in the matter of *Vijayander Kumar and Others vs. State of Rajasthan and Another [(2014) 3 SCC 389]*.

12. Learned Additional Public Prosecutors appearing on behalf of the State have adopted the submissions made by the learned Advocates appearing on behalf of the informant.

13. Having considered the rival submissions made on behalf of the parties, I find force in the submissions made by the learned Advocates appearing on behalf of the petitioners in these two cases.

14. The facts of the present case are exactly identical to the facts of the case of *Murari Lal Gupta vs. Gopi Singh* (supra). In the said case the accused had entered into an agreement to sell certain property in Delhi for a consideration of Rs.4.50 lakhs out of which Rs.3.50 lakhs was paid by the complainant to him. The balance amount of Rs.1 lakh was to be paid at the time of registration of the sale deed and delivery of possession. The complainant alleged that



inspite of three legal notices having been given, the accused failed to honour the agreement and thus cheated him. He, therefore, filed a complaint under Sections 406 and 420 of the Penal Code alleging that the petitioner did not honour the agreement inspite of three legal notices having been given. After recording of the statement of the complainant and three other witnesses examined by him, the learned Magistrate dismissed the complaint holding that it was pure and simple case of breach of an agreement to sell creating civil liability between the parties and the appropriate remedy for the respondent was to file a civil suit for specific performance of agreement and not to file a criminal complaint. The complainant challenged the order passed by the learned Judicial Magistrate in the Court of Session and the learned Sessions Judge allowed the revision application forming an opinion that inspite of civil remedy being available, a criminal prosecution was not barred. Thereafter, the accused filed a transfer petition under Section 406 of the CrPC before the Hon'ble Supreme Court seeking transfer of criminal case from the Court of Judicial Magistrate, 1st Class in the State of Bihar to the competent court in Delhi. After hearing the parties, a three-Judge Bench of the Hon'ble Supreme Court in the said case observed as under:

“We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having



taken into consideration all the material made available on record by the parties and after hearing the learned counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. 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.”.

15. In *Dalip Kaur and Others vs. Jagnar Singh and*



Another (supra) the question for determination before the Hon'ble Supreme Court was whether breach of contract of an agreement for sale would constitute an offence under Section 406 or Section 420 of the Penal Code. After examining the facts of the case and the relevant sections of the Penal Code, the Hon'ble Supreme Court held that an offence of cheating would constitute when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute the offence of cheating. It further held that if the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellant by non-refunding the amount of advance, the same would not constitute an offence of cheating or criminal breach of trust.

16. Coming back to the facts of the present complaint, it is an admitted fact that the petitioners in Cr. Misc. No.45519 of 2013 did own and possess the property for which negotiation is said to have been held. It is not the case of the informant that any of the accused tried to deceive him either by making a false or misleading representation nor it is a case that they offered him any fraudulent or dishonest inducement to deliver any property pursuant to which the informant parted with the money.

17. In view of the ratio laid down by the Hon'ble Supreme



Court in the afore-stated cases, at best, it is a pure and simple case of breach of contract, which would not attract ingredients of the offence under Section 420 or 406 of the Penal Code.

18. I also find substance in the argument of Mr. Shakeel Ahmad Khan, learned Advocate appearing in Cr.Misc. No.53326 of 2013 that by no stretch of imagination the purchasers could have been summoned to face trial for the offences alleged. There is nothing against the purchasers, which would even remotely attract the ingredients of Sections 420 and 406 of the Penal Code against them.

19. So far as the contention of Mr. Ajay Kumar Thakur, learned Advocate appearing on behalf of the informant that given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant that itself cannot be a ground to quash the criminal proceeding is concerned, there is no quarrel with the said proposition. However, if the given set of facts do not attract any criminal offence, in that case launching of criminal prosecution by the informant would certainly be an abuse of the process of the court.

20. The reliance placed by the informant in the decision of the Hon'ble Supreme Court in *Vijayander Kumar vs. State of Rajasthan* (supra) is of no help to him, as the facts of that case are quite different. The case of the petitioners is squarely covered by the



decisions of the Supreme Court in *Murari Lal Gupta vs. Gopi Singh and Dalip Kaur and Others vs. Jagnar Singh and Another* (supra).

21. In view of the discussions made above, allowing the prosecution to continue any more would amount to an abuse of the process of the court. Accordingly, the impugned order dated 08.09.2013 passed by the learned Judicial Magistrate, 1st Class, Patna passed in Pirbahore P.S. Case No.31 of 2013, is hereby quashed. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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