IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16186 of 2012

Arising Complaint Case No. 3495 Year- 2011 District- PURNIA

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1. Ghanshyam Das
2. Bimal Das

   Both sons of Late Fagu Mal
3. Yogesh Kumar S/O Ghanshyam Das

   All R/O-Nabrattan Hata, P.S.-K.Hat, Distt-Purnea
4. Nutan Prabha W/O Rajiv Ranjan R/O-Akashwani Road, Purnea, P.S.-K.Hat, Distt-Puunea(Bihar)
5. Rajiv Ranjan Singh S/O Late Deo Narayan Singh

   Both R/O-Akashwani Road, Purnea, P.S.-K.Hat, Distt-Puunea(Bihar)

.... Petitioners

Versus

1. The State Of Bihar
2. Md. Mokarram son of Md. Muslim, resident of Jhanda Chowk, Khazanchi Hat, P.S. K. Hat, District- Purnea.

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan, Advocate
For the O. P. No. 2	:	Mr. Raj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-12-2017

Heard Mr. Sanjeev Ranjan, learned counsel for the petitioners and Mr. Raj Kumar, learned counsel for opposite party no. 2.

2. This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioners for quashing the order dated 15.12.2011 passed in Complaint Case No. 3495 of 2011

by the learned Chief Judicial Magistrate, Purnea whereby he has taken cognizance of the offences punishable under Sections 467, 468, 506, 420 and 120-B of the Indian Penal Code (for short 'IPC').

3. The case of the complainant, in brief, is that the accused persons, namely, Ghanshyam Das, Bimal Das, Yogesh Kumar and Rajiv Ranjan Singh approached the complainant on 20.02.2010 with request to sell their land situated at Ward No 12 (old) corresponding to new Ward No. 5, M.S. Khata Nos. 451, 410, 607, 608, 609 and 187 measuring an area of 2 acres, 86 decimals and 2 kari within Purnea Municipality and requested the complainant to purchase the same for L. M. Techno Build Private Ltd (for short 'the Company'). The Company deals in the business of real estate also. The accused persons produced before the complainant, a photocopy of khatiyan standing in the name of their ancestor Fagu Mal and uncle Tirath Mal in presence of the accused Nutan Prabha, an employee of the Company. The offer for sale of the land was made for consideration of Rs.84 lacs in total to which the complainant agreed and, on demand of the accused, the complainant paid Rs.10 lacs through accused Nutan Prabha, as a part of consideration money, on 26.02.2010, through two cheques. The accused persons executed a written agreement for sale in acknowledgement of the contract of sale and receipts of the part of the consideration money in advance

on the same day. In the agreement, the name of Smt. Sushila Devi, Sanjay Kumar and Bharat Das was also mentioned, as owner of the land, but it was signed only by the accused Ghanshyam Das and Bimal Das. The agreement was made in the name of accused Nutan Prabha as on behalf of the Company. Thereafter, the accused Ghanshyam Das received a cheque for Rs.2 lacs on 05.03.2010 and further received a cheque of Rs.2 lacs on 20.05.2010. The accused Yogesh Kumar also received a cheque for Rs.1 lac. on 12.07.2010. All the cheques and payments were made through the accused Nutan Prabha.

4. It is further alleged that accused Bimal Das also received Rs.6,90,000/- by way of different cheques, but the details of the same are not available, as the records and cheque book are traceless by the accused Nutan Prabha.

5. On the basis of the above complaint, it has been alleged that a total amount of Rs.24,90,000/- was paid to the accused persons for purchase of land from the account of the Company. The accused Nutan Prabha actively participated in the transaction and the agreement for sale was made in the name of the Company through her, but she did not sign on the agreement for reasons best known to her. Since, sometimes past, she left coming to attend the work of the Company and, on repeated request, the accused persons did not

execute *kewala* for the aforesaid land. The complainant has further alleged that the accused persons have executed a power of attorney for sale of the aforesaid land in the name of accused Nutan Prabha on 08.11.2011 to defraud and cheat the Company.

6. The complainant was examined on solemn affirmation and, on his behalf, two inquiry witnesses, namely, Braj Shankar Jha and Md. Safiqul Islam were also examined. After perusing the complaint petition and the statement of witnesses recorded in course of inquiry, the learned Chief Judicial Magistrate, Purnea, vide order dated 15.12.2011, summoned the petitioners to face trial finding a *prima facie* case to be made under Sections 467, 468, 506, 420 and 120-B of the IPC against them.

7. Assailing the aforesaid order dated 15.12.2011, learned counsel appearing for the petitioners submitted that the complainant Md. Mokarram and the inquiry witnesses Braj Shankar Jha and Md. Safiqul Islam did not support the allegations made in the complaint. He submitted that even if the entire complaint is taken to be true at its face value, the same would not constitute any offence to summon the petitioners to face trial. According to him, petitioners Ghanshyam Das and Bimal Das are co-sharers of a joint family property and *karta* of the family. After disclosing genealogy and name of other co-sharers, the deed of agreement dated 26.02.2010 for selling the

said property for a consideration of Rs.84 lacs was executed and the entire consideration money was to be paid under all circumstances by the last week of January, 2011. As per the agreement, the time schedule for payment was required to be adhered to and the Company had to pay Rs.20 lacs till 15.04.2010, Rs.34 lacs till 31.07.2010 and Rs.20 lacs till last week of January, 2011. The agreement itself postulates that the sale deed was to be executed only after the payment of entire consideration and the time was the essence of the contract. He submitted that the petitioner no. 4 Nutan Prabha executed the agreement being authorized by the Company to sign on behalf of the Company.

8. He contended that Ghanshyam Das received Rs.10 lacs only as advance through cheque out of total consideration of Rs.84 lacs and thereafter, Rs.2 lacs was paid on 05.03.2010 through cheque. Further, a sum of Rs.5 lacs was paid on 20.05.2010 through cheque. Lastly, Yogesh Kumar also received Rs.1 lac through cheque. Till 12.07.2010, a sum of Rs.18 lacs was only paid, although agreement stipulated payment of Rs.54 lacs till 31.07.2010 and, thus, it was the complainant, who failed to comply with the terms of the agreement. He contended that the statement made in the complaint that the petitioner Bimal Das received Rs.6,90,000/- through different cheques is baseless, as no such payment was ever received

by him. He contended that missing of records and cheque book is a camouflage under which bald and vague allegation is being made so that allegation does not require prove. Lastly, he contended that as the complainant failed to make the entire payment within the time, the sale deed was not executed and non-execution of sale deed by the owners of the property would not constitute any offence as alleged in the complaint.

9. On the other hand, learned counsel appearing for opposite party no. 2 submitted that the complainant has fully supported the allegations made in the complaint in his statement made on oath. He submitted that the inquiry witnesses also supported the allegations made in the complaint and those allegations would certainly attract the ingredients of the offences for which cognizance has been taken and the petitioners have been summoned to face trial. He submitted that the petitioners induced the complainant to purchase the land in question and, after receiving amount of Rs.24,90,000/-, they failed to honour the agreement and execute the sale deed even though the complainant was ready to pay the balance amount.

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

11. I find substance in the submissions made by the learned

counsel for the petitioners. Admittedly, the complainant failed to pay the stipulated amount as per agreement. There is nothing on record to show that he had noticed the petitioners asking to receive payment to indicate his intention to pay. There is no allegation in the complaint that the petitioners no. 1 to 3 are not the owners of the property in question. It is also not the allegations that they were not competent to enter into the agreement for sale or to execute the sale deed. If for any reason, they did not execute the sale deed after receiving part of the consideration amount, the same would neither amount to 'cheating' nor 'criminal breach of trust'.

12. In ***Dalip Kaur & Ors. Vs. Jagnar Singh & Anr. [(2009) 14 SCC 696]***, the question for determination before the Supreme Court was whether breach of contract of an agreement for sale would constitute an offence under Section 406 or Section 420 IPC. After examining the fact of the case and the relevant sections of the IPC, the Supreme Court held that an offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making of 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 appellants by non-refunding the amount of advance the same would

not constitute an offence of cheating or criminal breach of trust.

13. In ***Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh & Anr. [(1998) 5 SCC 694]***, a three-Judge Bench of the Supreme Court considered a similar issue and relying upon illustration (g) of section 415 IPC, the Bench held that the agreement for sale of land and the earnest money paid to the owner as part of consideration and possession of land and the subsequent unwillingness of the owner to complete the same, gave rise to a liability of civil nature and the criminal complaint was, therefore, not competent.

14. Thus, I am of the view that no offence under Section 420 of the IPC is made, as there is no allegation in the complaint of deception or fraudulent or dishonest intention to induce the complainant to part with money as petitioners no. 1 to 3 are owners of the property in question and there is no dispute regarding their right, title, ownership of the land in question. So far as the offences under Sections 467 and 468 of the IPC are concerned, the ingredients of those offences are also not attracted, as essential pre-requisite for constituting offences under Sections 467 and 468 of the IPC is that there must be making of a false document, as specified in Section 464 of the IPC. There is no allegation in the present case that the documents executed by the petitioners no. 1 and 3 claiming

themselves to be co-sharers and *karta* was false one. I am also of the opinion that offence punishable under Section 120-B of the IPC is not attracted, as there is nothing in the complaint on the basis of which it can be said that there was meeting of mind between the parties to commit any illegal act.

15. In view of the discussions made above, this Court is of the opinion that the instant application deserves to be allowed. Resultantly, the impugned order dated 15.12.2011 passed in Complaint Case No. 3495 of 2011 by the learned Chief Judicial Magistrate, Purnea is, hereby, quashed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.12.2017
Transmission Date	11.12.2017