

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44681 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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1. Alexender Osta Son of Late Walter Josheph Osta R/o 24/1c Girish Chandra Bose Road, Flat No. 3 B, P.S.-Intely, Kolkata (West Bengal) at present Resident of Rose Valley Apartment, Flat No. 3b, Block-B, Third Floor-6, Tiljale Road, P.S.-Tiljale, Kolkata-39 (West Bengal)
 2. Cyril Osta Son of Late Walter Josheph Osta R/o 24/1C, Girish Chandra Bose Road, Flat No. 3B, P.S.-Intely, Kolkata (West Bengal) at present residing at D-303, Gem, Regency, Nirigune Mandir Layout, Vivek Nagar, P.S.-Koramangala, Bangalore (Karnatka)
 3. Smt, Shila Lawrence, D/o Late Walter Josheph Osta, Wife of Sri Terry Lawrence R/O 24/1C, Girish Chandra Bose Road, Flat No. 3B, P.S.-Entally, Kolkata (West Bengal), at present residing at D-303 Gem Regency, Nirigune Mandir Road, Vivek Nagar, P.S.-Koramangla, Banglore (Karnatka)
 4. Smt Anna D'Cruze @ Anna Mauza D'Cruze D/O Late Walter Josheph Osta, Wife Of Sri Noel D' Cruze R/O 24/1C, Girish Chandra Bose Road, Flat No. 3b, P.S.-Entally, Kolkata (West Bengal), at present residing at D-303 Gem Regency, Nirigune Mandir Road, Vivek Nagar, P.S.-Koramangla, Banglore (Karnatka)

.... Petitioners

Versus

1. The State of Bihar
2. Tara Singh @ Tara Chandra Singh, Son of Late Vishwanath Singh R/o Village-Kamlanath Nagar, P.S.-Town Police Station-Bettia, District-West Champaran

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar, Advocate
Mr. Sunil Kumar Singh, Advocate

For the Opposite Party no.2 : Mr. Bindhyachal Singh, Advocate
Mr. Satya Prakash, Advocate

For the State Mr. Nityanand Tiwary, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH



ORAL JUDGMENT

Date: 11-05-2017

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioners for quashing the order dated 25.06.2010 passed by the learned Judicial Magistrate-1st Class, Bettiah in Complaint Case No. 1424(C) of 2009 by which after taking cognizance of the offence punishable under Sections 406, 420, 467 and 120-B of the Indian Penal Code, the petitioners have been summoned to face trial.

2. In the complaint petition, it is stated that the father of the petitioners namely, Walter Joseph Osta was the owner of a piece of land pertaining to Khata No. 89, Khesra No.22/1, 22 measuring an area of 10 dhoor 10 dhurki situated at Kamalnath Nagar, Bettiah. Since he was in need of money, he authorized one Jorge Baptist Osta to negotiate for sale of the said land. Subsequently, Jorge Baptist Osta approached the complainant and persuaded him to purchase the aforesaid land. He arranged for a meeting of the complainant with Walter Joseph Osta who agreed to sell the land for Rs.2,05,000/-. Whereafter, Rs. 1,95,000/- was given to Walter Joseph Osta in presence of witnesses and an agreement of sale was prepared by him in favour of the complainant on 31st December, 1998. As per agreement, the balance amount of Rs.



10,000/- was to be paid on the date of registration of sale deed. It is stated that after some time when the complainant arranged the balance amount and informed Jorge Baptist Osta to get the sale deed executed after receiving the balance consideration money, the sale deed could not be executed as both Walter Joseph Osta and Jorge Baptist Osta took time on one pretext or the other. In the meanwhile, Walter Joseph Osta died in the year 2003.

3. It is alleged in the complaint that the petitioners who are sons and daughters of late Walter Joseph Osta had knowledge of the transaction since very beginning as Walter Joseph Osta had spent the amount on them. It is further alleged that despite knowing the factum of existence of an agreement of sale in respect of the land in question, on 04.02.2009, the petitioners fraudulently executed a general power of attorney in favour of one Md. Shahabuddin and one Md. Nurul Hoda. It is alleged that if the accused persons are not retrained and the land in question is sold by the power of attorney holder, the complainant would suffer a loss of Rs.6,00,000/-.

4. After registration of the complaint, the complainant was examined on solemn affirmation and, apart from him, statements of two other witnesses were recorded in course of inquiry conducted under Section 202 of the Code of Criminal



Procedure. Thereafter, the learned Magistrate vide order dated 25.06.2010 summoned the petitioners to face trial for the offence punishable under Sections 406, 420, 467, 468 and 120-B of the Indian Penal Code.

5. Being aggrieved by the aforesaid order dated 25.06.2010, the petitioners have filed the present application before this Court.

6. Mr. Rakesh Kumar, learned counsel for the petitioners submitted that the impugned order dated 25.06.2010 has been passed by the learned Magistrate in a mechanical manner without application of judicial mind. He contended that the ingredients of the offences alleged are not attracted at all in the present case. He contended that neither any amount was paid by the complainant to the petitioners nor the petitioners ever entered into any agreement with the complainant of the case. According to him, mere execution of a power of attorney in favour of any person would not attract any ingredients of the offences under which cognizance has been taken by the learned Magistrate.

7. *Per contra*, Mr. Bindhyachal Singh, learned counsel for the complainant submitted that though the petitioners directly did not receive the amount in question, the father of the petitioners had received the amount for sale of the plot in question,



which he failed to execute during his lifetime and since the petitioners were fully aware about the agreement having been entered into between the complainant and their father, they ought not to have executed any power of attorney in respect of the said land in favour of any other person. He contended that the alleged act of the petitioners by which they executed the power of attorney in favour of Md. Shahabuddin and Md. Nurul Hoda clearly demonstrates that the petitioners have acted in a dishonest manner in order to cause wrongful loss to the complainant and corresponding wrongful gain for themselves.

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

9. I find substance in the argument advanced by the learned counsel for the petitioners. The admitted case of the complainant is that pursuant to an agreement of sale of a piece of land an amount of Rs.1,95,000/- was paid to the father of the petitioners on 31.12.1998. The grievance of the complainant is that though he was ready to pay the remaining amount of Rs.10,000/- to the father of the petitioners, he failed to execute sale deed and transfer the land in question to the complainant during his lifetime and after his death the petitioners executed a general power of attorney in favour of two persons with respect to the said land.



10. In the opinion of this Court, such allegations do not make out any case against the petitioners. The petitioners were neither party to the agreement nor they had received any amount from the complainant. They did not owe legal obligation either to execute sale deed in favour of the complainant or to transfer the land in favour of the complainant.

11. It would be evident that the father of the petitioners owned and possessed the property for which negotiation is said to have been held between the parties. There is also nothing to suggest that either the father of the petitioners or the petitioners ever induced the complainant to purchase the land in question.

12. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission. In that view of the matter, there would be no application of the ingredients of sections 406 and 420 of the Indian Penal Code.

13. It is an admitted fact that the father of the petitioners died in the year 2003 whereas the present complaint has been filed after long delay in 2009. Even if, it is presumed that the petitioners had knowledge of execution of an agreement for sale, the same would not constitute any offence.

14. Here, in this regard, I would like to refer the



judgment of a three Judge Bench of the Supreme Court in **Murari Lal Gupta vs. Gopi Singh [(2005) 13 SCC 699]**, wherein it observed as under:-

“We have perused the pleadings of the parties, the complainant 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 u/s. 420 or Sec. 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 u/s. 420 or Sec. 406 of the Indian Penal Code 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.”

15. Again, **Dalip Kaur and Ors. vs. Jagnar Singh & Anr. [(2009) 14 SCC 696]**, the question of 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 of the Indian Penal Code. After examining the facts of the case and 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 trust does not constitute the offence of cheating. It further held that “if the dispute between the parties is 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”.*

16. I fail to understand as to why the learned Magistrate took cognizance of the offences punishable under Sections 467, 468 and 120-B of the Indian Penal Code. There is



nothing on record to suggest that the petitioners forged any document or committed any forgery for the purpose of cheating. The only allegation levelled against the petitioners in the complaint is that they executed a general power of attorney in favour of Md. Shahabuddin and Md. Nurul Hoda. Such an execution of power of attorney, by no stretch of imagination, would attract the ingredients of the offences punishable under Sections 467 and 468 of the Indian Penal Code.

17. Furthermore, there is nothing on record to suggest that there was an agreement between the petitioners for doing any unlawful act. Thus, no prima facie case even under Section 120-B of the penal code is attracted.

18. Considering the discussions made and the ratio laid down by the Supreme Court in the decisions noted above, I am of the considered opinion that none of the ingredients of the offences alleged are attracted in the present case. The very institution of the complaint is manifestly attended with mala fide for wreaking vengeance on the accused persons and with a view to spite them due to private and personal grudge. The uncontroverted allegations made in the complaint do not disclose commission of any offence and make out any case against the petitioners.

19. In that view of the matter, in order to secure the



ends of justice, I deem it fit and necessary to quash the entire complaint including the impugned order dated 25.06.2010 passed in Complaint Case No. 1424(c) of 2009. Ordered accordingly.

20. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2017
Transmission Date	16.05.2017

