

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32106 of 2016

Arising Out of PS.Case No. -1572 Year- 2013 Thana -PURNIA COMPLAINT CASE District-
PURNIA

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Abhay Kumar Ambastha, S/o Late Arjun Prasad, R/o Mohalla-Rajni Chowk,
Purnea, P.S.- K. Hat (O.P.), District- Purnea.

.... Petitioner

Versus

1. The State of Bihar.
2. Sri Mahavir Uraon, S/o Late Budhu Uraon, R/o Mohalla- Mahrajganj, P.S.-
Sadar, District- Purnea.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Sinha, Advocate
Mr. Arvind Kumar Sharma, Advocate
Mr. Chetan Kumar, Advocate

For the Opposite Party no.2 : Mr. Arvind Kumar Verma, Advocate
Mr. Ajit Ranjan Kumar, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-07-2017

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the opposite party
no.2.

The order under challenge in the present application
under Section 482 of the Code of Criminal Procedure is dated



05.09.2014 passed by the learned Judicial Magistrate, Purnea in C.A. (Complaint Application) No.1572 of 2013 by which the petitioner has been summoned to face trial in a case in which cognizance has been taken under Section 420 of the Indian Penal Code.

2. According to the complaint, an agreement was entered into between the parties for sale of 2.30 acres of land pursuant to which the complainant had paid Rs.9,97,000/- under different installments to the petitioner and was further ready to pay the remaining amount, but on one pretext or other the petitioner failed to execute the sale deed.

3. The complainant was examined on oath and apart from the complainant, four other witnesses were examined in course of inquiry conducted under Section 202 of the Code of Criminal Procedure whereafter, the petitioner was summoned to face trial for the charge under Section 420 of the Indian Penal Code.

4. Mr. Pramod Kumar Singh, learned counsel for the petitioner submitted that the initiation of complaint is a gross abuse of process of the Court. He submitted that the ingredients of the offence punishable under Section 420 of the Indian Penal Code are completely missing in the present case. He contended that it is not the case of the informant that the petitioner intentionally



induced the complainant in any manner to purchase the land with a fraudulent and dishonest intention. He submitted that it is also not the case of the complainant that the petitioner is not the owner of the land for which he entered into agreement with the complainant or that he was not competent to sell the land in question. He contended that simply because an agreement to sell was entered into, which agreement the petitioner allegedly failed to honour, it cannot be said that he has cheated the complainant. He contended that it is wrong to allege that the petitioner failed to execute the land in favour of the complainant rather the fact is that the complainant did not pay the agreed balance amount within the time stipulated in the agreement and, thus, the sale deed was not executed in favour of the complainant.

5. Mr. Pramod Kumar Sinha, learned counsel for the petitioner submitted that the dispute, if any, is of civil nature. In support of his submission, he has placed reliance on the decisions of the Supreme Court in **Murari Lal Gupta vs. Gopi Singh [(2005) 13 SCC 699]** and **Dalip Kaur & Ors. Vs. Jagnar Singh & Anr. [(2009) 14 SCC 696]**.

6. On the other hand, learned counsel for the opposite party no.2 submitted that it is an admitted case of the petitioner that he had received Rs.9,97,000/- from the complainant



and has not returned the said amount and this alone is sufficient to prove that he had dishonest intention right from the beginning. He contended that the ingredients of the offence punishable under Section 420 of the Indian Penal Code are clearly attracted in the present case and, thus, the learned Magistrate committed no fault in issuing process against the petitioner. He contended that in a given set of fact may make out a civil wrong as also a criminal offence.

7. Learned Additional Public Prosecutor on behalf of the State has adopted the submissions made by the learned counsel appearing on behalf of the opposite party no.2

8. I have considered the rival submissions made on behalf of the parties and perused the record.

9. I find force in the submissions made by the learned counsel appearing on behalf of the petitioner.

10. The facts of the case are exactly identical to the facts of the case of **Murari Lal Gupta (supra)**. In the said case, the accused had entered into 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 sale deed and delivery of possession. The complainant alleged that in spite 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 Indian Penal Code alleging that the petitioner did not honour the agreement in spite 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 a 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 the agreement and not to file a criminal complaint. The complainant challenged the order passed by the learned Judicial Magistrate in the court of Sessions and the learned Sessions Judge allowed the revision application forming an opinion that in spite of civil remedy is available a criminal prosecution is not barred. Thereafter, the accused filed a transfer petition under Section 406 of the Code of Criminal Procedure before the 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, the Supreme Court observed as under:-

“6. 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 materials 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. 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.”

(emphasis mine)

11. In **Dalip Kaur & Ors. Vs. Jagnar Singh (supra)**, 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 facts 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.

12. Coming back to the facts of the present complaint, I find that there is no allegation as to cheating or dishonest intention of the petitioner in retaining the money in order to have wrongful gain or causing wrongful loss to the complainant. The plain and simple case of the complainant is that the petitioner refused to execute the sale deed after receiving Rs.9,97,000/-. There is no allegation so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the complainant parted with the money.

13. In view of the ratio laid down by the Supreme Court in the aforestated cases, I have no hesitation in coming to the conclusion that the allegations made in the complaint do not attract



the ingredients of the offence punishable under Section 420 of the Indian Penal Code. They do make out a pure and simple case of breach of contract for which the complainant may seek other remedies available in law. Since the dispute between the parties is essentially a civil dispute resulting from a breach of contract on the part of the petitioner by non-refunding the amount of advance, the prosecution in the present case cannot be allowed to be continued.

14. Accordingly, the impugned order dated 05.09.2014 passed by the learned Judicial Magistrate, Purnea in C.A. (Complaint Application) No.1572 of 2013, is hereby quashed.

15. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.07.2017
Transmission Date	10.07.2017

