IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29271 of 2016

Arising Out of PS.Case No. -183 Year- 2015 Thana -KADAMKUAN District- PATNA

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1. Rohini Ranjana, wife of Shri Punit Jain, resident of 302, Om Vihar Apartment, P.S.- Kadamkuan, District - Patna.
2. Punit Jain, son of Shri Jitendra Kumar Jain, resident of 302, Om Vihar Apartment, P.S. Kadamkuan, District - Patna.

.... Petitioners

Versus

The State of Bihar. .... Opposite Party

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Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate
		Ms. Aparna Arun, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Opposite party no.2	:	Dr. Amrendra Kumar, Advocate
		Mr. Ravi Shankar Pankaj, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-08-2017

Heard Mr. Satyabir Bharti, learned counsel for the petitioners, Dr. Amrendra Kumar, learned counsel, who has *suo motu* appeared on behalf of the informant and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr. P.C.') has been preferred by the petitioners for quashing the order dated 07.11.2015 passed by the learned Judicial Magistrate, 1st Class, Patna in Kadamkuan P.S. Case No.183 of 2015 whereby after taking cognizance of the offences punishable under Sections 406 and 420/34 of the Indian Penal Code, the petitioners have been summoned to face trial.

3. The prosecution case has been instituted on the basis of the fardbeyan of one Sanjya Kumar @ Pappu Singh claiming himself to be the Vice-President, Janta Dal (U), Extremely Backward Cell. He has alleged in his fardbeyan that for purchase of a piece of land from the petitioners, he had paid a sum of Rs.27,50,000.00, but even after receiving money, they did not register the land in his favour and adopted a delaying tactics. He has alleged that the petitioners fraudulently sold the land to someone else and when he demanded back his money, they refused to return the same and tried to intimidate him. He has further alleged that when he visited the residence of the petitioners for demanding money, they threatened him and took away his gold chain and cash of Rs.10,000/- from his wallet. He has also alleged that petitioner no.2 took out his revolver and terrorized him.

4. On the basis of the aforesaid allegations, Kadamkuan P.S. Case No.183 of 2015 was registered under Sections 406, 420, 467, 468, 471, 341, 323 and 379/34 of the Indian Penal Code against the petitioners and investigation was taken up.

5. On completion of investigation, the police submitted their report under Section 173(2) of the Cr. P.C. on 28.07.2015 under Sections 420 and 406 of the Indian Penal Code against the petitioners.

6. It would be pertinent to note here that the police disbelieved the part of the allegation of threat to life and snatching away of gold chain and cash.

7. On the basis of the police report, the learned jurisdictional Magistrate took cognizance of the offences under Sections 406 and 420/34 of the Indian penal Code against the petitioners and summoned them to face trial vide order dated 07.11.2015. The aforesaid order dated 07.11.2015 is under challenge in the present application.

8. Mr. Satyabir Bharti, learned counsel for the petitioners submitted that the entire allegations made against the petitioners are based upon an agreement to sell dated 21.11.2013 executed between the petitioner no.1 and the informant Sanjay Kumar. He has submitted that the agreement to sell, as contained in Annexure-4 to the present application, would reveal that it was executed for sale of 1 katha 10 dhurs of land for a total consideration amount of Rs.41,50,000.00. It would further reveal that petitioner no.2 had signed the said agreement in the capacity of a witness. He has submitted that the informant had paid 27,50,000.00 only whereas as per the terms of the agreement, the total consideration amount of Rs.41,50,000.00 was to be paid within three months from the date of agreement but, admittedly, the informant failed to make

the payment within the stipulated period of three months whereupon, on his request, the agreement was extended upto 31.03.2014 by the petitioner no.2 who was note even the executant of the agreement. He has submitted that again the informant failed to make payment up to 31.03.2014 whereupon the agreement was extended by the petitioner no.2 upto 31.09.2014 and lastly upto 30.01.2015. He has submitted that all such extensions were made by the petitioner no.2, who was not the executants of the agreement and, thus, he was not authorized to alter and terms and conditions of the agreement. He has submitted that time being the essence of the agreement, since the informant having failed to make payment of the consideration amount and having sought as many as three extensions of more than a year, the petitioner no.1 executed a sale deed of the land in question with another person on 26.12.2014 upon realizing that the informant has no intention to deposit the consideration amount in near future. He has submitted that the extension of time by the petitioner no.2 was being made in good faith at the request of the complainant, as he is the husband of the petitioner no.1.

9. Mr. Bharti has further argued that in view of the admitted facts no offence under Sections 406 and 420 of the Indian Penal Code is made out. In this regard, he has placed reliance on the decisions of the Supreme Court in the matter of **Murari Lal Gupta**

vs. Gopi Nath Singh [(2005) 13 SCC 699] and **Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh [(1998) 5 SCC 694]**.

10. *Per contra,* Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State has submitted that there is specific allegation against the petitioners that they took Rs.27,50,000/- from the informant of the case for executing a sale deed in respect of a particular piece of land, but they failed to execute the sale deed in spite of the demand made by the informant of the case in this regard. He has contended that such an allegation would definitely attract the ingredients of the offences punishable under Sections 406 and 420 of the Indian Penal Code.

11. Similarly, Dr. Amrendra Kumar, learned counsel for the informant has submitted that the petitioner no.2 had made endorsement in the agreement to sell in respect of extension of time after taking approval from petitioner no.1. He has submitted that the last extension for execution of the sale deed was made on 30th of October, 2014 upto 30.01.2015, but the land, in question, was sold on 26.12.2014 itself. He has submitted that petitioner is not correct in saying that it was because of failure on the part of the informant of the case that the sale deed was not executed rather the true fact is that since petitioner no.1 was not available for execution of the sale deed, petitioner no.2 himself took time so that his wife, who was

undergoing treatment, may come to Patna and execute the sale deed. He has submitted that so far as the allegations made by the informant in respect of the offences punishable under Sections 406 and 420 of the Indian Penal Code are concerned, were found true during investigation of the case and based on the materials available on record. The learned jurisdictional Magistrate has rightly taken cognizance of the offences against the petitioners.

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

13. In my opinion, the question, which would arise in the present case is that even if the entire allegations made in the FIR are taken at their face value and accepted in their entirety, whether or not the ingredients of the offences punishable under Sections 406 and 420 of the Penal Code would be attracted.

14. Section 406 of the Penal Code prescribes punishment for criminal breach of trust. Section 405 of the Penal Code defines the offence of criminal breach of trust as under :

> **"405. Criminal breach of trust —**
> Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which

such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"."

15. A careful reading of Section 405 of the Penal Code shows that a criminal breach of trust involves the following ingredients:-

(a) a person should have been entrusted with property, or entrusted with dominion over property;

(b) that person dishonestly misappropriated or converted to his own use that property, or dishonestly used or disposed of that property or willfully suffered any other person to do so;

(c) that such misappropriation, conversion, use or disposal was in violation of any direction of law prescribing the mode in which such trust was discharged.

16. It would, thus, appear that for the offences punishable under Section 406 of the Penal Code, the prosecution must prove :-

(i) that the accused was entrusted with property or with dominion over it; and

(ii) that he (a) dishonestly misappropriated it, or (b) dishonestly converted it to his own use, or (c) used it, or (d) disposed of it in violation of any direction of law prescribing the mode in which such trust was discharged.

17. The gist of the offence prescribed under Section 406 of the Penal Code is misappropriation done in a dishonest manner. The first part of the said offence involves the fact of entrustment, wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligation which is created.

18. The offence punishable under Section 420 of the Penal Code 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."

19. The offence of cheating is defined under Section 415 of the 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"."

20. To hold a person guilty of cheating as defined under Section 415 of the Penal Code, it is necessary to show that the accused had fraudulent or dishonest intention at the time of making the promise with an intention to retain the property.

21. The question, whether failure to honour agreement to sell without their being any allegation of fraudulent or dishonest inducement having been made by the accused pursuant to which the complainant parted with money would constitute offence under Sections 406 and 420 of the Penal Code, is no more *res integra*.

22. In **Murari Lal Gupta** (supra), 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."
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> (emphasis mine)

23. In **Nageshwar Prasad Singh alias Sinha** (supra), a similar question fell for consideration before the Supreme Court and a three Judge Bench relying upon illustration (g) of section 415 of the Penal Code 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 not competent.

24. Coming back to the facts of the present case, there is no dispute to the fact that the agreement was for sale of a piece of land, which was owned by petitioner no.1 and, against which, part payment was made by the informant. There is no averment in the first information report so far as to infer any fraudulent or dishonest inducement having been made by the petitioners pursuant to which the informant parted with money. There is also no dispute to the fact that petitioner no.1 was competent to enter into an agreement to sell or could have transferred title in the property to the informant. Merely because an

agreement to sell was entered into, which agreement the petitioner no.1 failed to honour, it cannot be said that the petitioners had cheated the informant of the case. In view of the ratio laid down by the Supreme Court in **Murari Lal Gupta** (supra) and **Nageshwar Prasad Singh alias Sinha** (supra), the subsequent unwillingness of the owner to complete the sell after receiving the earnest money would give rise to a liability of civil nature and the criminal prosecution would not be justified.

25. In that view of the matter, the application is allowed. The impugned order dated 07.11.2015 passed by the learned Judicial Magistrate, 1st Class, Patna in Kadamkuan P.S. Case No.183 of 2015 is hereby quashed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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