

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25931 of 2014

Arising Out of PS.Case No. -330 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Smt. Renu Devi wife of Shri Suresh Singh.
2. Suresh Singh son of Late Narayan Singh. Both are resident of village
Hinduni Tola, Nayanchak, P.S. Phulwari Sharif, District Patna.

.... Petitioners

Versus

1. The State of Bihar.
2. Shivgovind Ray son of Late Tunna Roy resident of village Alampur,
P.S. Phulwari, District Patna.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Sachhidanand Choudhary, Advocate
: Mr. Sudhir Kumar, Advocate
For the Opposite Party : Mr. Lala Sachindra Kumar, Advocate
For the State : Mr. Mayanand Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 09-08-2017

Heard learned counsel for the petitioners,
learned counsel for the complainant-opposite party no.2 and
learned Additional Public Prosecutor for the State.

The petitioners, in the present case, are seeking
quashing of the order taking cognizance and issuance of
summon dated 03.07.2012 passed by learned Judicial
Magistrate, 1st Class, Patna by which cognizance for the
offences under Sections 420, 323 and 504 of the Indian Penal



Code has been taken in Complaint Case No. 330(C) of 2012.

Learned counsel for the petitioners has placed the statement made in the complaint petition, as contained in Annexure-1. The complainant-opposite party no. 2 has alleged that under an agreement to sell dated 22.11.2005, the accused persons who are petitioners in the present case and their mother namely, Devanti Devi, agreed to sell the land bearing plot no. 642, Khata No. 129, Thana 37, Tauzi 5325 in Mauza Abdul Rahmanpur measuring an area of 6 decimals.

It is alleged that the accused persons taking the complainant in belief received a sum of Rs. 3,00,000/-, the accused no. 1 signed the agreement to sell showing receipt of advance and promised to execute a registered deed but they kept on postponing execution of the deed on one pretext or another.

The complainant-opposite party no. 2 claims that he kept on believing the word of the accused persons, but the accused persons did not execute the registered deed. It is alleged that on 20.07.2011, complainant-opposite party no. 2 went to the house of the accused persons and requested them to execute the registered deed, on which the accused



persons allegedly became angry, abused the complainant-opposite party no. 2 and ousted by pushing him and told him that they will not execute the registered deed.

It is further alleged that the accused persons did not execute the registered deed in respect of the land and also did not reply to the legal notice.

In course of inquiry under Section 202 Cr.P.C., the complainant-opposite party no. 2 produced three witnesses namely, Indradev Rai, Dina Nath Rai, and Ashok Kumar who have supported the complainant's case.

Learned counsel for the petitioners submits that without adding or subtracting anything out of the complaint petition a bare reading of the same would show that no criminal offence muchless an offence under Section 420, 323 and 504 I.P.C. would be made out. In his submission, the case is at best that of a civil dispute which has been given colour of criminal proceeding by making a story setting up the date of 20.07.2011 and 25.01.2012, where the complainant-opposite party no. 2 alleged that the accused persons abused the complainant and told him that the registered deed shall not be executed.



Learned counsel for the petitioners has placed reliance upon judgment of the Hon'ble Supreme Court in the case of ***Murari Lal Gupta Vs. Gopi Singh*** since reported in ***(2006) 2 SCC (Cri.) 430***; he has placed specific reliance upon paragraph 6, which is quoted hereunder for ready reference:

"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 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. 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.”

Further submission of learned counsel for the petitioners would be that, in the present case, a mere statement that the complainant had got an agreement to sell, which was not honoured by the accused-petitioner, would not be sufficient to constitute an offence of cheating. According to learned counsel the very agreement to sell is a forged and fabricated document and there is a complete denial of the same by these petitioners. He would further submits that the cognizance under Section 323 and 504 IPC has also been taken in a routine and mechanical manner without appreciating that those are ornamental allegations made by complainant-opposite party no. 2 in order to make out a case and to put pressure upon these petitioners. The allegations are also vague and there was no material to support the same.

On the other hand, learned counsel representing the complainant-opposite party no. 2 submits that the complainant-opposite party no. 2 has produced himself as



well as three witnesses to support the allegation. The order taking cognizance is based on the materials available on record which need not be interfered with by this court at this stage.

Learned counsel for the complainant-opposite party no. 2 further submits that the petitioners had received Rs. 3,00,000/- as advance in the name of execution of a registered sale deed with respect to the land mentioned in the complaint petition but the same was not honoured. Learned counsel submits that the complainant-opposite party no. 2 was waiting for execution of registered deed hence there was some delay in filing the complaint petition.

I have heard learned counsel for the parties and perused the materials on record. In order to appreciate the rival contentions, it would be just and proper to quote the relevant provision of Sections 420, 323 and 504 of the IPC, whereunder cognizance have been taken by the learned Magistrate, which reads as such:

S.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.

S.323. Punishment for voluntarily causing hurt –

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

S.504. Intentional insult with intent to provoke breach

of the peace – *Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

On perusal of the records particularly the complaint petition, I have no iota of doubt that the entire tone and tenor of the complaint petition would go to show that it is at best a civil dispute which has been given colour of a criminal proceeding. In the complaint petition, paragraph nos. 1, 2 and 4 are entirely devoted towards the case of the complainant that there was an agreement to sell under which the petitioners had received the money but they have not executed the sale deed. The allegation of abuse and pushing



out the complainant from the house has been made vaguely setting up the date of 20.07.2011 and 25.01.2012, which have been apparently made in an ornamental manner to give it a colour of criminal proceeding.

The relevant paragraph of the judgment relied upon on behalf of the petitioner which has been quoted hereinabove. In the said case, the complaint was filed under Section 406 and 420 IPC on an allegation that the petitioner of the said case despite having received a sum of Rs. 4.50 lacs under an agreement to sell did not execute the sale deed. The cognizance was taken by the learned Judicial Magistrate which was set aside in revision by the learned Sessions Judge (allowed by learned Sessions Judge).

The Hon'ble Apex Court having taken into consideration the materials was satisfied that the criminal proceeding initiated against the respondent was wholly unwarranted and it was an abuse of the process of court.

The views expressed by Hon'ble Supreme Court in the case of **Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.** since reported in **(2007) 12 SCC 1** are worth relying upon. The Hon'ble Apex Court has taken note of



the cases in which in respect of a pure and civil dispute the parties give it a colour of criminal proceeding. An extract from paragraph '23' & '24' of the said judgment is quoted hereunder for ready reference : -

“23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of court, and*
- (iii) to otherwise secure the ends of justice.*

24. Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.”

The submission of learned counsel for the opposite party no. 2 that this court should not interfere with the order taking cognizance in the facts of the present case is not acceptable.

This court is of the considered opinion that in the



facts of the present case where agreement for sale is said to have been executed in the year 2005 and the accused-petitioners allegedly refused to abide by the agreement the complainant would have at best a civil dispute in form of a suit for specific performance of contract but he cannot be allowed to turn the civil dispute in a criminal proceeding after about 7 years. Learned counsel for the petitioners submits that even otherwise a suit for specific performance of a contract would be barred by limitation. It is his further submission that after 7 years of the agreement the present complaint was filed making a statement that the complainant-opposite party no. 2 had gone to the police station for lodging of an FIR but same was not registered. According to him, this part of the statement is also not believable and this court can take judicial notice of the fact that it has become rhetoric to mention this fact in each and every private complaint only in order to explain the delay.

This court having considered the totality of the facts stated in the complaint would come to a conclusion that it is at best a civil dispute and continuation of criminal proceeding would not be just and proper. The learned



Magistrate has taken cognizance in a routine and mechanical manner.

In the facts and circumstances of the case, the order taking cognizance dated 03.07.2012 passed by learned Judicial Magistrate, 1st Class, Patna in connection with Complaint Case No. 330(C) of 2012, is hereby quashed.

Accordingly, this application stands allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	

