

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31007 of 2011

Arising Out of Complaint Case No. -116C Year- 2010 Thana -Alauli District- KHAGARIA

=====

Baij Nath Prasad Keshari S/o Late Mehilal Keshari, resident of village - Bakhari Bazaar, P.S- Bakhari, Distt.- Begusarai,.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sunita Devi @ Tripul Devi W/o Anil Paswan, resident of village - Bahadurpur, P.S- Alauli, Distt.- Khagaria.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Shubhesh Pandey, Adv.
For the Opposite Party/s : Mr. Ram Sumiran Rai, Adv.
For the State : Mr. Akhileshwar Dayal, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 30-08-2017

Heard Mr. Shubhesh Pandey, learned counsel for the petitioner, Mr. Ram Sumiran Rai, learned counsel appearing on behalf of the opposite party no. 2 and Mr. Akhileshwar Dayal, learned Additional Public Prosecutor representing the State.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 14.03.2011 passed by the learned Sub-Divisional Judicial Magistrate, Khagaria in Complaint Case No. 116C of 2010 whereby and whereunder the learned Magistrate finding *prima facie* case for the offence under section 406 of the Indian Penal Code, ordered for issuance of summons against the petitioner.



3. The fact, in brief, is that the opposite party no. 2 had filed a Complaint Case No. 116C/2010 on the file of learned Sub-Divisional Judicial Magistrate, Khagaria alleging *inter alia* that this petitioner contacted the complainant to transfer his land measuring 3 bigha 6 Katha 15 dhur of plot nos. 872, 873, 877 and 878 at the rate of Rs.14,300/- per katha in her favour. The complainant (O.P. No.2) paid an amount of Rs.6,79,500/- to the petitioner on different occasions in presence of witnesses. This petitioner on repeated request, executed a sale deed in favour of the complainant (O.P. No.2) on 21.08.2009 with respect to 1 bigha 9 katha land for a total consideration amount of Rs. 4,15,000/-. The petitioner agreed to get the sale deed executed through her son with respect to remaining land. The petitioner in spite of repeated demand, did not execute the sale deed and thereby cheated the complainant and also committed breach of trust by retaining the balance amount of Rs.2,64,500/-. The complainant and her witnesses supported the allegation during enquiry and the learned Magistrate finding *prima facie* case, has summoned the petitioner as stated above.

4. The leaned counsel for the petitioner submits that there was absolutely no agreement between the parties for executing the sale deed as asserted by the complainant. There is not a single chit of paper either to support her contention as regards agreement to sell



the land measuring 3 bigha 6 katha and 15 dhur or payment of consideration money. The petitioner has executed the sale deed for an area measuring 1 bigha 9 katha and has received the consideration money to the tune of Rs. 4,15,000/-. The complainant with similar allegation, had lodged an F.I.R. on 22.08.2010 against the petitioner, which was registered as Begusarai SC/ST Police Station Case No. 200 of 2010. The matter was investigated by Police and Final Form was submitted by them as case untrue. The opposite party no. 2 and her husband had filed a Title Suit No. 8 of 2011 in the court of learned Sub-Judge-I, Khagaria on 11.01.2011 for specific performance of contract seeking relief to direct this petitioner to execute the sale deed in her favour with respect to the land in question. The dispute between the parties is purely a civil dispute. There is absolutely no ingredients constituting the offence of breach of trust and so, the criminal prosecution of this petitioner is not sustainable in the eyes of law and, the order taking cognizance is fit to be quashed.

5. The learned counsel for the opposite party no. 2 as well as learned Additional Public Prosecutor opposed the submission.

6. On going through the complaint petition and annexures enclosed with this application, I find that this petitioner had executed the sale deed in favour of the opposite party no. 2 on 21.08.2009 on payment of Rs.4,15,000/-. The allegation that this



petitioner had agreed to execute the sale deed with respect to 3 bigha 6 kattha 15 dhur land, appears vague and does not find support from any document. The opposite party no. 2 has neither produced any paper to support the alleged agreement nor any paper showing payment to the tune of Rs. 6,79,500/-.

7. In a three-Judge Bench decision of the Supreme Court in *Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh & Anr. [(1998) 5 SCC 694]*, a similar question fell for consideration and relying upon illustration (g) of section 415 IPC, it was 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. 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.

8. In State of Haryana v. Bhajan Lal, it was, inter alia observed as follows: (SCC pp. 378-79, 102): 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604.

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.



(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a 9 just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there



is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. It is admitted fact that the petitioner being owner of the land in question had sold the land measuring 1 bigha 9 kattha after receiving total consideration money of Rs.4,15,000/-. There is absolutely no written document to show that the petitioner had entered into an agreement to sell the land measuring 3 bigha 6 kattha and 15 dhur in favour of the complainant or received the amount of Rs.6,79,500/- from her in this regard. The complainant has filed a title suit for specific performance of contract and in the event of decree, she would certainly get the sale deed executed in terms of agreement. The dispute between the parties is purely a civil dispute.

10. In view of above principles laid down by the Hon'ble Supreme Court as discussed above, I find that criminal prosecution of this petitioner would be an abuse of process of Court. As such, this criminal miscellaneous application is allowed and the order dated 14.03.2011 taking cognizance against the petitioner



passed by the learned Sub-Divisional Judicial Magistrate, Khagaria in Complaint Case No. 116C of 2010 for the offence under section 406 of the Indian Penal Code and his criminal prosecution on that basis is hereby quashed.

11. The Office is directed to return the Lower Court Records forthwith.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	6.9.2017
Transmission Date	6.9.2017

