

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45359 of 2013

Arising Out of Complaint Case No. -2327 Year- 2011 Thana -null District- PATNA

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1. Ravindra Kumar Chaudhary S/O Late Banwari Lal Chaudhary Resident Of F/4-B, Pushpa Bihar Apartment, Exhibition Road, P.S- Gandhi Maidan, District & Town, Patna, At Present 58 Upper Ground Floor, Kailash Hill, East Of Kailash, New Delhi- 65

.... Petitioner/s

Versus

1. The State Of Bihar
2. Rana Pratap Singh S/O Late Ram Swarup Singh Resident Of Shnkutlayan, Akashwani Road, Khajpura, Bailey Road, P.S- Rajiv Nagar, District & Town, Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Adv.
Mr. Rajesh Kumar, Adv.
For the State : Mr. Parmanand Prasad, APP
For Opposite Party No.2 : Mr. Jai Prakash Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 15-05-2017

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 22.02.2012 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 2327(C) of 2011 whereby the learned Magistrate has summoned the petitioner to face trial for the offences punishable under Sections 406 and 420 of the Indian Penal Code (for short 'IPC').

2. It is stated in the complaint that the accused being a builder constructing Raunak Vatika Apartment at Patna became close



to the complainant as his house was situated nearby the construction site. The complainant negotiated with the accused Ravindra Kumar Choudhary for purchase of a flat in the apartment measuring 1190 square feet. The total negotiation amount was fixed at Rs.31,15,000/-. Thereafter, the accused directed the complainant to deposit 25% of the consideration amount and believing his words the complainant paid Rs.2,01,000/- by cheque no. 457958 on 22.03.2010 and Rs.5,74,000/- by cheque no. 457959 on 05.05.2010. Since the complainant had negotiated for purchase of the flat in the name of his son, money receipts were issued in his name. After repeated request, an agreement to sell dated 10.02.2011 was sent to the complainant which was valid till 28.03.2011. The son of the complainant being left with no choice signed the agreement. The agreement paper was produced in the S.B.I., Judges Road Branch, Patna, which sanctioned loan vide letter dated 28.03.2011. As the said agreement to sell was valid upto 28.03.2011 the Bank vide letter dated 29.03.2011 requested the accused to sign the agreement extending the agreement to sell for a suitable period and the period was extended for a day only. The Bank, thereafter, issued the required cheque on 29.03.2011 amounting to Rs.23,40,000/- in the name of accused and cheque amounting to Rs.2,50,000/- towards fee for registration.

3. It is stated that rest Rs.57,454/- required for fees for



registration was paid to the Bank by the complainant through cheque dated 29.03.2011.

4. It is stated that, on 29.03.2011 while the accused was present at Patna, when the complainant informed him that the cheque for payment of the remaining amount of flat is ready and arrangement for registration of sale deed has been done and now the accused has only to sign the sale deed, the accused disbelieved the complainant. Thereupon the son of the complainant sent the copies of cheque and other relevant documents to the accused through email for his satisfaction then the accused fled to Delhi on 29.03.2011 itself.

5. It is stated that thereafter the accused entered into an agreement to sell in connection with the same flat with another person, namely, Devendra Kumar and has received Rs.4,78,000/- on 06.04.2011. It is alleged that in this way the accused has defrauded the booking amount paid by the complainant through cheque.

6. It is contended by the learned counsel for the petitioner that since the complainant failed to fulfill the promise as per the agreement to pay the balance amount within the stipulated period, the execution of sale deed was not made by the petitioner in his favour. He contended that at the time of consideration of bail, pursuant to the order dated 03.07.2011 passed by the learned Sessions Judge, Patna in A.B.P. No. 2128 of 2012 the petitioner has already paid back the



entire amount advanced by the complainant for purchase of the flat in question. He contended that in case the summoning order is quashed, the petitioner would not lay any claim over the amount handed over to the complainant pursuant to the order passed by the learned Sessions Judge in the aforesaid A.B.P. No. 2128 of 2012.

7. On the other hand, learned counsel for the complainant submitted that though the petitioner has returned the principal amount taken as consideration for sale of the flat, interest over the amount has not been paid to the complainant. He contended that in any view of the matter, a prima facie case is made out under Sections 406 and 420 of the IPC and thus the order passed by the learned Magistrate cannot be faulted with.

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

9. In view of the allegation made in the complaint, I am of the view that it cannot be inferred that the petitioner had a guilty intention at the time of booking the flat or entering into an agreement to sell with the complainant. It is not the case of the complainant that the petitioner did not own or possess the flat in question or that the complainant was not competent to enter into an agreement.

10. In *Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh & Anr. [(1998) 5 SCC 694]*, a similar question fell for



consideration before the Supreme Court 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.

11. In *Murari Lal Gupta Vs. Gopi Singh [(2005) 13 SCC 699]*, a three-Judge Bench of the Supreme Court observed as under :-

“...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. ...”



12. 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.

13. Having regard to the facts and circumstances of the present case and taking into consideration the ratio laid down by the Supreme Court in the decisions quoted hereinabove, in my opinion, it is a case of pure and simple breach of contract and the dispute is essentially a civil dispute and the criminal complaint is, therefore, bad in law.

14. Accordingly, the Complaint Case No. 2327(C) of 2011 including the order dated 22.02.2012 passed by the learned Judicial Magistrate 1st Class, Patna is hereby quashed. However, in case the



petitioner claims return of the amount from the complainant deposited by him pursuant to the order dated 03.07.2011 passed by the learned Sessions Judge, Patna, the order quashing the summoning of the petitioner and complaint shall be deemed to be recalled and the petitioner shall have to face trial.

15. With the aforesaid observation and direction, the application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16-05-2017
Transmission Date	16-05-2017

