

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21837 of 2013

Arising Out of COMPLAINT CASE No. -1371 C Year- 2012 District- NALANDA
(BIHARSHARIFF)

- =====
1. Gyan Ranjan Kumar son of late Ram Ballabh Singh
 2. Maiya Devi wife of Late Ram Ballabh Singh
 3. Baby Devi wife of Sri Gyan Ranjan Kumar
- All residents of Village Maghara P.S. Deepnagar District Nalanda

.... Petitioners

Versus

1. The State of Bihar
2. Ashwani Kumar Nirala Son of Sri Rajendra Kumar Nirala, resident of Village Ajaypur P.O. Ajaypur, P.S. Noorsarai, District - Nalanda

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Mithilesh Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 20-06-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

2. Despite valid service of notice on the opposite
party no. 2, he has chosen not to appear before the Court and
contest the matter.

3. This application under Section 482 of the Code
of Criminal Procedure, 1973 has been filed for quashing of the
order dated 08.03.2013 passed by the learned Sub-divisional
Judicial Magistrate, Nalanda at Biharsharif in Complaint Case No.
1371-C of 2012 whereby and whereunder the petitioners have been



summoned to face trial for the offence punishable under Section 406/120-B of the Indian Penal Code (for short 'IPC').

4. The complainant Ashwani Kumar Nirala alleged in the complaint that the accused persons intended to sell a piece of land admeasuring 37 decimal under Khata No. 315, Plot No. 976 at village Maghra. The complainant contacted the accused persons and desired to purchase the land. After negotiation, it was finalized that accused persons would transfer the entire land at the cost of Rs.27,60,000/-. Out of which, a total amount of Rs.11,65,000/- was paid to the accused persons by the complainant in installments. It is admitted by the complainant that after receiving the part payment, the accused persons executed two sale deeds. He has stated that on 28.03.2012, the petitioner no. 1 had executed a sale deed in favour of complainant's sister, namely, Indu Kumari Sinha transferring three kathas of land and on 30.03.2012, the petitioner no. 1 further executed a sale deed of two kathas of land in favour of mother of the complainant but the remaining 7 kathas of land has not been transferred despite willingness of the complainant to pay the agreed balance amount.

5. It is submitted by the learned counsel for the petitioners that even if the entire allegations made in the complaint are taken to be true, ingredients of the offence punishable under



Section 406/120-B of the IPC are not attracted. He contended that as a matter of fact, after negotiation the petitioner had paid only Rs.11,65,000/-out of the total agreed amount of Rs.27,60,000/- and on receipt of the part payment, the petitioner no. 1 had executed sale deed in respect of five kathas of land in favour of the sister and the mother of the complainant. Since the rest of the payment was not made by the complainant, the petitioner no. 1 refused to execute sale deed in favour of the complainant or his family members. He submitted that in view of the law laid down by the Supreme Court in *Nageshwar Prasad Singh alias Sinha Vs. Narayan Singh & Anr. [(1998) 5 SCC 694]*, *Murari Lal Gupta Vs. Gopi Singh [(2005) 13 SCC 699]* and *Dalip Kaur & Ors. Vs. Jagnar Singh & Anr. [(2009) 14 SCC 696]*, the impugned order taking cognizance of the offence and summoning the petitioners to face trial is bad in law.

6. On the other hand, Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State submitted that in view of the allegations made in the complaint, the ingredients of the offence punishable under Section 406/120-B of the IPC are clearly attracted.

7. I have heard learned counsel for the petitioners and the State.



8. The first and foremost question which would arise in the present case is that whether or not in view of the allegations made in the complaint, the ingredients of the offences punishable under Section 406 would be attracted.

9. Section 406 IPC prescribes punishment for criminal breach of trust which is defined in Section in Section 405 of the IPC. It reads 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 wilfully suffers any other person so to do, commits **"criminal breach of trust".**”

10. A careful reading of Section 405 IPC would show 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.

11. The gist of the offence prescribed under section 406 IPC is misappropriation done in a dishonest manner.

12. In the present case, looking at the allegations levelled in the complaint, I find that no allegation is made attracting the ingredients of Section 405 IPC. The allegation levelled in the complaint is that the deal for the entire land was finalized between the parties for Rs.27,60,000/-. Admittedly, the complainant had paid only Rs.11,65,000/-. It admitted that after receiving Rs.11,65,000/-, the petitioner no. 1 had executed two sale deeds, one in favour of the sister of the complainant and the other in favour of the mother of the complainant.

13. In exactly identical situation, in *Murari Lal Gupta Vs. Gopi Singh* (Supra), a three-Judge Bench of the Supreme Court observed as under :-

“We have perused the pleadings of the parties, the complainant 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.”

14. Similarly, in *Dalip Kaur. 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 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.

15. In view of the facts noted above and the ratio laid down by the Supreme Court in *Murari Lal Gupta Vs. Gopi Singh* (Supra) and *Dalip Kaur. Vs. Jagnar Singh* (Supra), I am of the considered opinion that at best, it is a pure and simple case of civil breach of contract between the parties which would not attract the ingredients of the offence under Section 406/120-B of the IPC.

16. In that view of the matter, the impugned order dated 08.03.2013 passed by the learned Sub-divisional Judicial Magistrate, Nalanda at Biharsharif in Complaint Case No. 1371-C of 2012 is hereby quashed.

17. The application stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.06.2017
Transmission Date	22.06.2017

