

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38952 of 2013

Arising Out of PS.Case No. -664 Year- 2012 Thana -BHOJPUR COMPLAINT CASE District-
BHOJPUR

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1. Jairam Yadav S/O Late Hitnarain Yadav Resident Of Village- Bhadwar, P.S.-
Chandi, District- Bhojpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Bhuneshwar Prasad Singh S/O Late Ram Badan Singh Resident Of Village-
Sakaldih, P.S.- Koilwar, District- Bhojpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Nath Sinha, Adv.
For the State : Mr. (Dr.) Mayanand Jha, APP
For Opposite Party No.2 : Mr. Dronacharya, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-04-2017

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the opposite party no.2.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'Cr.P.C.') has been filed for quashing
the order dated 6th May, 2013 passed by the learned Judicial
Magistrate 1st Class, Ara in Complaint Case No. 664(C) of 2012/
3035 of 2013 whereby the petitioner and 5-6 others have been
summoned to face trial for the offences punishable under Sections
406, 420 and 120-B/34 of the Indian Penal Code (for short 'IPC').

3. In sum and substance, the case of the complainant is that
he requested brother-in-law's cousin Ramji Singh to arrange a buyer



as he intended to sell about 69 decimals of land situated in Village Sakaddi in the district of Bhojpur, Ara. Subsequently Ramji Singh informed him that one Jairam Yadav (petitioner) is willing to purchase the land whereafter he came to the village and went along with the son of Ramji Singh to the Registry Office where the petitioner and others were present from before. He executed the sale deed in their presence in favour of Jairam Yadav. The allegation is that it was agreed that a total sum of Rs.7,50,000/- would be paid to him as consideration for the land but the said amount was never paid to him.

4. Learned counsel for the petitioner submitted that the entire allegation made in the complaint is concocted and fabricated in order to black-mail the petitioner and realize some more money from him by adopting pressure tactics. The complainant did not deny execution of the sale deed rather he has admitted that he put his signature, thumb impression, photographs etc. on the sale deed but the same was done on the promise made by his brother-in-law's cousin Ramji Singh that the entire payment of consideration would be made to him after execution of the sale deed. He submitted that the entire negotiation in the matter was done by Ramji Singh at the behest of the complainant who had received full and final payment even before the execution of sale deed and the complainant put his



signature, thumb impression, finger print etc. on the sale deed after being satisfied by the receipt of the payment of consideration. He submitted that after execution of the sale deed the land has already been mutated in the name of the petitioner.

5. On the other hand, learned counsel for the opposite party no.2 submitted that the complainant has supported his case in his statement made on oath and the witnesses examined in course of inquiry have also supported the case of the complainant that no payment of consideration was made to the petitioner for the sale of the property. He contended that the allegations made in the complaint do attract the ingredients of the offences punishable under Sections 420 and 406 of the IPC and thus the order impugned does not suffer from any illegality.

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

7. Section 406 of the IPC prescribes punishment for the offence of criminal breach of trust, which has been defined under Section 405 of the IPC.

8. Section 405 of the IPC 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 willfully suffers any other person so to do, commits “criminal breach of trust”.

9. A careful reading of Section 405 IPC 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.

10. The gist of the offence under Section 406 IPC is misappropriation done in a dishonest manner. There are two distinct parts of the said offence. The first 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.

11. Section 420 IPC deals with cheating. The offence of cheating is defined under Section 415 of the IPC, 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**".

12. One of the essential ingredients of the offence of cheating is dishonest inducement to the person to deliver any property or allow any person to retain any property.

13. So far as the present case is concerned, the complainant has not alleged that the petitioner or any one else dishonestly induced him to part with the property rather the admitted case of the complainant is that he requested Ramji Singh to arrange some buyer for his land. Hence, one of the most essential ingredients to attract the offence of cheating which is punishable under Section 420 of the IPC is completely missing in the present case.

14. As seen above, dishonest intention and misappropriation are the two essential ingredients of offence of criminal breach of trust. In this regard it is to be noted that the Registration Act was enacted in 1908. The object and the purpose of the said Act inter alia is to provide a method of public registration of document so as to give information to the people regarding legal rights and obligations arising or affecting a particular property. The very object of



registering the document is to make public aware that document has been executed to prevent fraud and forgery and to secure a reliable and complete amount of transactions affecting the title to the property. It is well settled that where a transfer is effected by way of sale with condition that title will pass on payment of consideration and such intention is clear from the recital in the deed, then such instrument of sale can be cancelled by a deed of cancellation on the ground of non-payment of consideration. Under such circumstance, the title remains with the transferor. However, the complainant has not made any averment that from the recitals of the deed it would appear that payment of consideration was a precondition for transfer of title. In absence of such allegation, both the aforesaid ingredients of breach of trust are clearly wanting in the present case.

15. Once the title to the property is transferred and vested in the transferee by the sale of property, in other words, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the civil court by obtaining a decree of cancellation on the ground inter alia of fraud or any other valid reasons.

16. In the considered opinion of this Court, a dispute which is purely of civil nature has been given a colour of criminal act with the sole objective to take vengeance. If the payment of consideration has not been made the complainant ought to have taken recourse to



the civil court for a decree of cancellation instead of filing of criminal case, which apparently seems to be an abuse of the process of the Court.

17. In that view of the matter, the impugned order dated 6th May, 2013 passed by the learned Judicial Magistrate 1st Class, Ara in Complaint Case No. 664(C) of 2012/ 3035 of 2013 is quashed. Further, for the reasons discussed above, the Complaint Case No. 664(C) of 2012/ 3035 of 2013 and all the proceedings emanating from it are also quashed.

18. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11-04-2017
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