# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Criminal Miscellaneous No.46180 of 2013**

Arising Out of PS.Case No. -176 Year- 2012 Thana –K.Hat District- PURNIA

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1. Usha Devi, W/o Arun Kumar Chaudhary,
2. Arun Kumar Chaudhary, Son of Late Hari Prasad Chaudhary,
3.Abhishek Chaudhary, Son of Arun Kumar Chaudhary
All are residents of Village-Rampur, P.S.-Mohanpur, District-Deoghar (Jharkhand)

.... .... Petitioners

Versus

1. The State of Bihar
2. Indradeo Parera, Son of Late Sukhdeo Parera, Resident of Mohalla-Purnea City, P.S.- Sadar, District- Purnea

.... .... Opposite Parties

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**Appearance :**

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| For the Petitioners : | Mr. Prahalad Kumar Bhagat, Advocate |
| | Mr. Rounak Kumar Singh “Pankaj”, Advocate |
| For the Opposite Party No.1: | Mr. Jharkhandi Upadhyay, APP |
| For the Opposite Party No.2: | Mr. Bijendra Kumar Singh, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 17-08-2017**

Heard Mr. Prahalad Kumar Bhagat, learned counsel for the petitioners and Mr. Bijendra Kumar Singh, learned counsel for the opposite party no.2.

2. The order under challenge in the present application is dated 16.05.2013 passed by the learned Chief Judicial Magistrate, Purnea in K. Hat P.S. Case No.176 of 2012 whereby the petitioners have been summoned to face trial for the offences punishable under Sections 419, 420, 406 and 504 of the Indian Penal Code.

3. The prosecution case is based on the written complaint of the informant Indradeo Parera, who has alleged inter alia that he had entered into an oral agreement with the petitioners for sale of land

with one old pucca house situated at khata no.16, khesra no.293 and 422. Out of the total value of the said piece of plot and pucca house, Rs. 2,50,000/- was paid by the informant through cheque drawn on State Bank of India, Gulab Bag Branch to the petitioner Arun Kumar Chaudhary and it was decided that the remaining amount of Rs. 1,00,000/- would be paid on the date of execution of the sale deed. It is further alleged that the informant requested the petitioners for execution of sale deed several times. Eventually, with great efforts, the petitioners came to the Registry Office, Purnea at 10:00 a.m. on 14th March, 2012, but they did not execute the sale deed and when a protest was made, they started abusing the informant.

4. On the basis of the aforesaid allegations, the informant has alleged that the accused persons have deliberately cheated him.

5. The case was investigated upon by the police and, on completion of investigation, a report under Section 173(2) of the Code of Criminal Procedure (for short 'Cr. P.C.') was submitted in the court vide charge-sheet no.26 of 2013 dated 28.02.2013. Thereafter, the learned Chief Judicial Magistrate, Purnea vide impugned order dated 16.05.2013 took cognizance of the offences punishable under Sections 419, 406, 420 and 504 of the Indian Penal Code and summoned the petitioners.

6. The aforesaid order dated 16.05.2013 is under challenge

before this Court.

7. It has been submitted by the learned counsel appearing for the petitioners that the complaint, in question, is an abuse of the process of the court, as none of the ingredients of the offences alleged are attracted. He has contended that it is not the case of the informant that the petitioners did not own and possess the property or that they were not competent to enter into an agreement to sell or could not have transferred title in property to the informant. He has submitted that simply because an agreement to sell was entered into, which agreement the petitioners allegedly failed to honour, it cannot be said that the petitioners have cheated the opposite party no.2 or cheated the informant. In support of such submissions, he has placed reliance on the decisions of the Supreme Court in **Murari Lal Gupta vs. Gopi Singh [(2005) 13 SCC 699]** and **Dalip Kaur and Others vs. Jagnar Singh and Another [(2009) 14 SCC 696].**

8. Learned counsel for the petitioners has further contended that allegation of taking advance from the informant of the case through cheque for the purpose of selling land and house is absolutely false. He has submitted that there was neither any talk in this regard nor any agreement was ever entered into between the parties. He has submitted that the informant had taken Rs.2,50,000/- from the petitioner no.1 for his treatment on 8th March, 2010 and, in this regard,

the informant and petitioner no.1 had executed a loan agreement, as contained in Annexure-2 to the present application wherein the informant had promised to repay the loan amount on or before November, 2010. The said amount of Rs. 2,50,000/- given as friendly loan to the informant was returned to the petitioner no.1 through demand draft in question on 06.09.2010.

9. On the other hand, learned counsel for the informant has submitted that the defence taken by the petitioners cannot be made a ground for quashing the criminal case at the stage of cognizance. He has submitted that though there was no written agreement in respect of sale of the land and house, there was an oral agreement to sell between the parties and an advance payment to the tune of Rs.2,50,000/- was also made by way of cheque. He has submitted that the ingredients of the offences alleged are clearly attracted in the present case. Hence, the impugned order taking cognizance of the offences and summoning the petitioners to face trial does not suffer from any illegality. He has contended that a given set of fact may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant that itself cannot be a ground to quash a criminal proceeding.

10. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State has adopted the submissions made by the

learned counsel appearing on behalf of the informant.

11. Having considered the rival submissions made on behalf of the parties, I find force in the submissions made by the learned counsel appearing on behalf of the petitioners.

12. The facts of the present case are exactly identical to the facts of the case of **Murari Lal Gupta** (supra). In the said case the accused had entered into an agreement to sell certain property in Delhi for a consideration of Rs.4.50 lakhs out of which Rs.3.50 lakhs was paid by the complainant to him. The balance amount of Rs.1 lakh was to be paid at the time of registration of the sale deed and delivery of possession. The complainant alleged that in spite of three legal notices having been given, the accused failed to honour the agreement and thus cheated him. He, therefore, filed a complaint under Sections 406 and 420 of the Penal Code alleging that the petitioner did not honour the agreement in spite of three legal notices having been given. After recording of the statement of the complainant and three other witnesses examined by him, the learned Magistrate dismissed the complaint holding that it was pure and simple case of breach of an agreement to sell creating civil liability between the parties and the appropriate remedy for the respondent was to file a civil suit for specific performance of agreement and not to file a criminal complaint. The complainant challenged the order passed by the

learned Judicial Magistrate in the Court of Session and the learned Sessions Judge allowed the revision application forming an opinion that in spite of civil remedy being available, a criminal prosecution was not barred. Thereafter, the accused filed a transfer petition under Section 406 of the CrPC before the Hon'ble Supreme Court seeking transfer of criminal case from the Court of Judicial Magistrate, 1st Class in the State of Bihar to the competent court in Delhi. After hearing the parties, a three-Judge Bench of the Hon'ble Supreme Court in the said case observed as under:

> **"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 in 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 of Section 406 IPC is made out even prima facie."**

13. In **Dalip Kaur** (supra) the question for determination before the Hon'ble Supreme Court was whether breach of contract of an agreement for sale would constitute an offence under Section 406 or Section 420 of the Penal Code. After examining the facts of the case and the relevant sections of the Penal Code, the Hon'ble Supreme Court held that an offence of cheating would constitute when the accused has fraudulent or dishonest intention at the time of making 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 appellant by non-refunding the amount of advance, the same would not constitute an offence of cheating or criminal breach of trust.

14. Coming back to the facts of the present complaint, it is an admitted case of the informant that the petitioners own and possess the land and the house for which negotiation was made. The informant has not made any allegation in the FIR that the petitioners intended to cheat the informant right from the beginning. In that case, if the petitioners failed to honour the promise or oral agreement made between the parties, in the light of ratio laid down by the Supreme Court in **Murari Lal Gupta** (supra) and **Dalip Kaur** (supra), the same would be a pure and simple case of civil breach of contract and it would not constitute the offences as alleged in the present complaint.

15. In that view of the matter, the impugned order dated 16.05.2013 passed by the learned Chief Judicial Magistrate, Purnea in K. Hat P.S. Case No.176 of 2012 is quashed.

16. The application stands allowed.

**(Ashwani Kumar Singh, J.)**

Sanjeet/-

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