IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39445 of 2013

Arising Out of PS.Case No. -1411 Year- 2012 Thana -DARBHANGA COMPLAINT CASE District- DARBHANGA

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1. Rakesh Goyal @ Rakesh Bihari Goyal, S/o Late Bipin Bihari Goyal, Resident of Mohalla -Rambagh, P.S.- L.N.M.U., District- Darbhanga.
2. Vishnu Bahadur Prasad Gupta @ Vishnu Bahadur Gupta, S/o Late Shyam Bahadur Prasad Gupta
3. Ranjan Garg S/o Vishnu Bahadur Prasad Gupta
   Both petitioner nos. 2 & 3 are resident of Mohalla-Kadirabad, P.S.- L.N.M.U., District- Darbhanga, presently residing at J. Extension 105, First Floor, Laxmi Nagar, Near Durga Mandir, New Delhi.

.... Petitioners

Versus

1. The State of Bihar.
2. Ram Lakhan Sahu, S/o Late Mahavir Sahu, Resident of Mohalla-Laxmisagar, P.S.- L.N.M.U., District -Darbhanga.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Iqbal Asif Niaze, Advocate
For the Opposite Party no.2 : Mr. Pankaj Kumar Sinha, Advocate
For the State : Dr. Mayanand Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-04-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for quashing of the order dated 29.06.2013 passed by the learned Judicial Magistrate-1st Class, Darbhanga in C.R. Case No. 1411 of 2012 whereby the petitioners have been summoned to face prosecution under Section 417 of the Indian Penal Code (for short 'IPC').

2. Opposite party no. 2 Ram Lakhan Sahu filed a

written complaint vide C.R. No. 1411 of 2012 in the court of Chief Judicial Magistrate, Darbhanga on 09.07.2012 alleging therein *inter alia* that the petitioner nos. 2 and 3 agreed to sell 1 bigha land bearing khata no. 91, khesra no. 163(old) situated in Mauza- Beladullah, East Bhigo, District- Darbhanga on the payment of consideration amount of Rs.30,000/- per katha and accordingly, the petitioner no. 3 received total amount of Rs.3 lakh from the complainant through bank drafts dated 15.01.2008, 12.03.2008 and 10.09.2008 and thereafter on receiving further amount of Rs. 3 lakh in cash from the complainant, the petitioner no. 3 on the basis of power of attorney dated 04.05.2007 given by his father executed a registered sale deed dated 20.12.2013 in favour of the complainant with respect to 10 katha land and gave an assurance that the rest 10 katha land would be transferred subsequently. But, despite several reminders the petitioner nos. 2 and 3 failed to fulfill the promise.

3. It is further stated in the complaint that accused nos. 1 to 3 (petitioners) who are common relatives has conspired together and in furtherance of their conspiracy, petitioner no. 2 gave another power of attorney to the petitioner no. 1, who despite knowing the entire fact transferred the land, which was already sold to the complainant on 22.05.2010. On coming to know about

the aforesaid mischief played by the accused persons, the complainant obtained a certified copy of the sale deed dated 22.05.2010 executed by the petitioner no. 1 whereby he came to know that on the basis of the power of attorney dated 09.10.2009 the accused persons had transferred the land to the accused no. 4 Kamlesh Kumar, who was also well aware about the entire facts.

4. It is further alleged that when the complainant requested the accused petitioners to return the advance amount taken by them, they refused to do so.

5. The complaint filed under Section 200 of the Cr.P.C. was made over by the learned Chief Judicial Magistrate to the court of Judicial Magistrate for inquiry under Section 192 of the Cr.P.C. where the statement of the complainant on solemn affirmation was recorded and besides the complainant, three other witnesses were examined during inquiry conducted under Section 202 of the Cr.P.C.

6. After holding the enquiry, the learned Judicial Magistrate, 1st Class, Darbhanga vide order dated 29.06.2013 held that the complainant had succeeded in making out a *prima facie* case under Section 417 of the Indian Penal Code against all the accused persons including the petitioners and summoned them in exercise of power under Section 204 of the Cr.P.C. to face trial.

7. It is submitted by Mr. Iqbal Asif Niazi, learned advocate for the petitioners that the grievance made in the complaint petition is based on the allegation of non-execution of sale deed against the payment made by the complainant through bank drafts, which is falsified from the complaint petition itself, wherein it has been categorically stated that after receiving the said amount, the petitioner no. 3 had executed a sale deed dated 23.12.2008 in favour of the complainant with respect to his 10 katha land. He submitted that no amount was ever paid to the petitioners in cash rather the entire payment of Rs.3 lakh was made in three installments through bank drafts. The first payment was of Rs.5000/-, second payment was of Rs.1 lakh and the last payment was of Rs. 1.5 lakh which was made on 10.09.2008 and, accordingly, a sale deed was executed on 20.12.2008 in favour of opposite party no. 2 and, as such, the claim of the complainant that on 20.12.2008 further cash payment of Rs. 3 lakh was made by him is nothing but a false and concocted story in order to blackmail and harass the petitioners.

8. He submitted that the complainant did not produce any chit of paper regarding such cash payment of Rs. 3 lakh nor even he produced any written agreement showing that the petitioners had promised to sell 1 bigha land to the complainant.

He contended that even if it is assumed to be true, it is purely a case of civil nature. He contended that the criminal proceeding is completely unwarranted and not sustainable in law. He submitted that the falsity of the case would also be apparent from the fact that the alleged payment was made in the year 2008, but after lapse of a period of four years the present case has been lodged on 09.07.2012. He submitted that even otherwise, the order taking cognizance of the offence and summoning the petitioners is barred under Section 468 of the Cr.P.C. He contended that the land which has been sold to the accused no. 4 is different from the land which was earlier sold to the complainant. The boundary of these two plots are quite different from each other and as such the claim of the prosecution that the petitioner no. 1 had executed a sale deed in favour of accused Kamlesh Kumar with respect to the same land, which was earlier sold to the complainant is totally false and misleading.

9. On the other hand, learned counsel for the complainant-opposite party no.2 submitted that the allegations made in the complaint do attract the ingredients of the offence punishable under Section 417 of the Indian Penal Code. He submitted that the complainant has supported the allegations made in the complaint in his examination on oath and besides him, three

other witnesses have also supported the complainant's case in course of inquiry. He submitted that the offence alleged is continuing one and, hence, there would be no application of Section 468 of the Cr.P.C. in the present case. He submitted that the defence of the petitioners on facts of the case cannot be made a ground for quashing of an otherwise *bona fide* complaint.

10. I have heard the rival contentions made on behalf of the parties and carefully perused the record.

11. From perusal of the complaint, it would be evident that the allegation of cash payment of Rs. 3,00,000/- to the petitioners is not supported by any chit of paper. There is no written agreement to sell one bigha land to the complainant rather the entire allegations are verbal and even if it is assumed to be true, in the opinion of this Court, it is purely a dispute of civil nature.

12. The learned Magistrate has found a *prima facie* case to be made out under Section 417 of the IPC which deals with punishment for 'cheating'. It reads as under:-

> "**Section 417. Punishment for cheating**.- Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

13. The offence of cheating has been defined under Section 415 of the Indian Penal Code, which reads as under:-

> "**Section 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**"."

14. Thus, it would be evident that so far as the offence of cheating is concerned, there must be dishonest intention at the inception of delivery or retention of property. In absence thereof, there can be no offence of cheating.

15. In **Sukhdeo Jha Utpal vs. State of Bihar [AIR 1957 SC 466]**, the Hon'ble Supreme Court held: "*on charge of cheating that the accused made a false representation with the knowledge that it was false and when he had dishonest intention to induce the person to deceive to part with his property at the very time when he made a representation is an essential ingredient of the offence. On such charge, the burden lies on the prosecution to prove affirmatively not only that the accused has made a false*

representation, but also he made it with dishonest intention knowing that the representation which he was making was false".

16. In **S.W. Palanitkar and Ors. vs State of Bihar and Anr. [(2002) 1 SCC 241**], the Hon'ble Supreme Court held: *"... In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating*".

17. In the present case, there is nothing on record to show that the petitioners knowingly made any false representation much less dishonestly or fraudulently any representation. It is not the case of the complainant that the petitioners did not own the property. The admitted case of the complainant is that 10 katha of land was transferred after receipt of money in favour of complainant by execution of a registered sale deed. Under such circumstances, one of the basic ingredients of the offence of cheating as defined under Section 415 of the IPC punishable under Section 417 of the IPC is not made out.

18. So far as the allegation of the complainant in

respect of transfer of the land to some other person is concerned, the petitioners have contended that the land which has been sold to the accused Kamlesh Kumar is different from the land which was earlier sold to the complainant as the boundary of these lands are quite different from each other. However, the opposite party no. 2 has not refuted this aspect of the matter in respect of the specific pleading made in the petition. Even in course of argument, learned counsel for the complainant did not dispute the aforesaid contention of the petitioners.

19. This Court also finds substance in the argument of the petitioners that an attempt has been made to convert a purely civil dispute into a criminal case with a view to bring pressure on the accused persons with oblique motive.

20. By now, the Hon'ble Supreme Court in catena of decisions has laid down that civil dispute cannot be converted into a criminal dispute with a view to bring pressure on the accused persons.

21. In **M/s. Indian Oil Corporation v. M/s. NEPC India Ltd. and Ors. [AIR 2006 SC 2780]**, the Hon'ble Supreme Court made the following observations : "*a growing tendency in business circles to convert purely civil disputes into criminal cases is obviously on account of a prevalent impression*

that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged".

22. In **V.Y.Jose and Anr. vs. State of Gujarat and Anr. [(2009) 3 SCC 78]**, the Hon'ble Supreme Court observed: "*only because civil law can be taken recourse to would not necessarily mean that criminal proceedings should be barred. There exists a distinction between pure contractual dispute of civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. serves a salutary purpose that a person should not undergo harassment of litigation for a*

number of years although no case has been made out against him. A matter which essentially involves dispute of a civil nature should not be allowed to be the subject matter of a criminal offence, the latter being not a shortcut of executing a decree which is non-existent. The Superior Courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of court. However, it has a duty in terms of Section 483 of the Cr.P.C. to supervise the functioning of the trial court".

23. I also find substance in the submission of leaned counsel for the petitioner that the order taking cognizance is barred under Section 468 of the Cr.P.C. It is an admitted case of the complainant that the payment for the land was made in the year 2008. There was no complaint or notice whatsoever at any point of time and after a lapse of period of four years, the complaint has been instituted on 09.07.2012. As per the provision of Section 468(2)(b) of the Cr.P.C., the bar of limitation to taking cognizance would be one year, if the offence is punishable for a term not exceeding one year. The commencement of the limitation of period as per Section 468 of the Cr.P.C. is to be considered from the date of occurrence. Section 417 of the IPC is punishable for a term which may extend to one year. The cause of action

arose when the petitioners refused to execute the sale deed after receiving the last payment in the year 2008. Hence, taking cognizance of an offence under Section 417 of the IPC after four years of the cause of action was clearly hit by law of limitation.

24. Keeping in mind the discussions made, hereinabove, and the ratio laid down by the Hon'ble Supreme Court in the decisions noted above, I am of the considered opinion that allowing the prosecution of the petitioners in the aforesaid complaint to continue would amount to an abuse of the process of the court.

25. In that view of the matter, the entire criminal proceedings arising out of C.R. Case No. 1411 of 2012 including the order dated 29.06.2013 passed by the learned Judicial Magistrate-1st Class, Darbhanga are hereby quashed.

26. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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