IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16490 of 2014

Arising out of P.S. Case No.683 Year 2010 Thana DIHRINAGAR District SASARAM (ROHTAS)

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1. Dayanidhi Singh S/o Late Satyadeo Singh
2. Kanchan Prabha W/o Daya Nidhi Singh Both Resident of Mohalla Saketnagar, Police Station Sasaram, District Rohtas.

.... Petitioners

Versus

1. The State of Bihar.
2. Mrinal Kumar S/o Late Kasinath Pandey Munsi of U.S. Contraction Pvt. Ltd., Resident of Village Subhash Nagar Asthan, Police Station Dehari, District Rohtas.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Sandip Kumar, Advocate Mr. C.M. Jha, Advocate
For the State	:	Md. Mushtaque Alam, APP
For O.P. No.2	:	Mr. Krishna Prasad Singh, Sr. Advocate Mr. Amrendra Nr. Rai, Advocate Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 15-01-2018

Heard learned counsel for the parties.

2. The petitioners by invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C. seek quashing of the cognizance order dated 10.02.2014, passed by S.D.J.M., Dehri, Rohtas in Dehri P.S. Case No.683 of 2010 thereby taking cognizance of the offence under Sections 406 and 420/34 of the Indian Penal Code.

3. A short fact giving rise to the case is that the accused Dayanidhi Singh, petitioner no.1 had good relationship with Smt. Muskan Pandey, Director of U.S. Constructions Private Limited, so he took loan of Rs.100,00,000/- and promised to return it back after getting payment from his contract work as he had made investment in the

projects. The amount was given by cheques, some amount in cash and some materials were also provided by the Director, U.S. Constructions Private Limited to the petitioners. On persuasion made by the informant to pay back the loan amount, Dayanidhi Singh issued several cheques, in total of Rs.80,00,000/- to U.S. Constructions Private Limited but the Bank Manager disclosed that no such amount in the account of the accused is available, so the informant disclosed this fact to the Director, who talked with the accused who again promised to inform them after making arrangement of the money. On one pretext or the other he was taking time, ultimately he declared that he is unable to return back the money.

4. Learned counsel for the petitioners submits that in case of getting a friendly loan and non-payment of the loan amount does not constitute any offence of either cheating or breach of trust. Learned counsel for the petitioners has placed reliance on two decisions, in the case of *Binod Kumar vs. State of Bihar*, reported in *2015 (1) PLJR 120(SC*) and other in the case of *Iceberg Industries Limited vs. State of Bihar*, reported in *2010 (2) PLJR 1043*. Learned counsel for the petitioners further submits, in alternative argument, that as far as petitioner no.2 is concerned, even taking the entire allegation in its entirety, no offence is made out against her. She has only been implicated in this case being the wife of Dayanidhi Singh, petitioner no.1.

5. Contrary to that the learned counsel appearing on behalf of opposite party no.2 submits that the decisions relied upon by the learned counsel for the petitioners is not applicable in the present case. Both the cases relate to contractual work. In case of failure to make payment in contractual work, the Court held that no ingredient of cheating and breach of trust is made out however, concedes that there is no allegation in the FIR against petitioner no.2.

6. Having considered rival submissions and on perusal of the records, the Court finds that in case of taking friendly loan and not returning it back later on, as promised, the allegations do disclose *prima facie* case of cheating and breach of trust. Sections 415 as well as 420 of the Indian Penal Code read as follows:

> "**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".
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> **420. Cheating and dishonestly inducing delivery of property.**–Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

7. Section 420 of the Indian Penal Code is aggravated form of cheating. One of the essential ingredient of cheating is the deception at the very initial stage and deception is by giving fraudulent and dishonest inducement to the person so deceived as a result he delivered property to that person. One of the examples given in explanation of Section 415 (f) of the Indian Penal Code reads as follows:-

> "(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats."

8. In the present context, the allegation is of taking loan by petitioner no.1 with a promise to return it back but cheque was issued without any money in the account, so the ingredients of cheating as well as ingredients of breach of trust is made out. The ratio decided in the case of *Binod Kumar* (supra) as well as in the case of *Iceberg Industries Limited* (supra) do not apply in the present case. In both the cases there was a dispute relating to non-payment of bill pertaining to contract executed by the complainant and the parties.

9. However, in the case at hand considering the allegations levelled in the FIR, the ingredients of cheating and criminal breach of trust is made out but only against Dayanidhi Singh, petitioner no.1. There is complete absence of any allegation against Kanchan Prabha, petitioner no.2, wife of petitioner no.1. There is categorical allegation that loan was taken by Dayanidhi Singh only and no role is assigned to

his wife, so even taking the allegations into entirety, no *prima facie* case of cheating and breach of trust is made out against her, so the criminal proceeding against Kanchan Prabha, petitioner no.2 inclusive of the cognizance order dated 10.02.2014, passed in Dehri P.S. Case No.683 of 2010, pending in the court of learned S.D.J.M., Dehri, Rohtas with respect to her only is hereby quashed, whereas petitioner no.1, Dayanidhi Singh is concerned, the criminal proceeding will proceed further against him in accordance with law.

10. The quashing application stands partly allowed.

11. However, it is made clear that as far as the case of Dayanidhi Singh, petitioner no.1 is concerned, the observation made above in the order shall not affect either of the parties during the course of trial. It only relates to the cognizance order.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	AFR
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