

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19837 of 2011

Arising Out of PS. Case No.-2752 Year-2004 Thana- KAHALGAON District- Bhagalpur

Satyendra Kumar, Proprietor M/s Satyendra Kr. & Company, S/o Sri Bhagwan Ds, resident of Mohalla- Devkutir, A Block, Flat No. 301, Jagatnarayan road, P.S.- Kadamkuan, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Harihar Prasad Lal, S/o Late Yogendra Prasad Lal, village- ghat Road, Kahalgaon, P.S.- Kahalgaon, District- Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar, Advocate.
Mr. Krishna Chandra, Advocate.
Rakesh Kumar Ranjan, Advocate.

For the Opposite Party/s : Mr. Nustaque Alam, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 12-04-2018

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

2. Petitioner seeks quashing of order dated 25.02.2011 passed by the Judicial Magistrate, 1st Class, Bhagalpur in Kahalgaon P.S.Case No. 388 of 2004 thereby petition filed under Section 239 of Cr.P.C. by the petitioner-accused was rejected.

3. The brief facts giving rise to the case is that initially a complaint was filed by the O.P. No. 2/complainant levelling allegation that he entered into an agreement with the petitioner, a registered contractor with N.T.P.C. in the year 1994, to do works of the N.T.P.S. project. A written agreement was signed by both on



18.08.1994; moreover, authorities of the N.T.P.C., other accused persons, also allowed in writing to do extra job by the complainant on behalf of the petitioner. In completing the work assigned to the complainant, he incurred expenses of Rs. 4,04,450/- including making payment to the labourers engaged in completing the project. However, some additional work was also assigned to him by the officials of the N.T.P.C. and the same was completed by the complainant and submitted bill of Rs. 2,67,714/- but the payment was not made despite notice sent to the accused persons. So all accused persons entering into conspiracy defaulcated the money of the complainant.

4. Learned counsel for the petitioner submits that the entire allegation, as stated in the complaint, even if taken into entirety, it does not constitute *prima facie* offence of cheating or breach of trust rather fact of the case discloses at best dispute exclusively of civil nature, the criminal case is filed only in order to put pressure to the petitioner to yield to the pressure.

5. Learned counsel for the petitioner also draws attention to Annexure-5 of the application by which on different occasions payment was made to the complainant. It is contended that in order to constitute offence of cheating, the element of inducement and deception by practicing dishonest and fraudulent method, at



the inception of the agreement, is lacking in the present case. In support of his submission, he places reliance on two decisions of the Apex Court, (1) *Indian Oil Corpn. v. NEPC India Ltd. and Ors.* reported in (2006) 6 SCC 736 and (2) *Y.V.Jose and Anr. v. State of Gujarat & Anr.* reported in (2009) 3 SCC 78. However, it is pointed out that as per allegation the agreement was done in the year 1994 and complaint is filed after a decade in the year 2004.

6. Learned counsel for the State submits that *prima facie* offence is made out against the petitioner and earlier cognizance too has been taken against him.

7. Having considered the rival submissions and on perusal of record, the Court finds that there was a contractual agreement between the petitioner and the complainant; as per the agreement, the complainant was to do work assigned to him by the petitioner. It appears that petitioner was given contract by the N.T.P.C. for fabrication, erection and alignment of structural work and the complainant was engaged by the petitioner, as sub-contractor, to perform some works. Annexure-6 series show payments made by the petitioner from time to time to the complainant.

8. In order to constitute offence of cheating, the first and foremost ingredients to be shown by the complainant is that the



petitioner has had any fraudulent or dishonest intention at the time of inception of agreement making fake promise or representation. In the case of ***Y.V.Jose*** (surpa), the Apex Court held that in absence of a culpable intention at the time of making initial promise, being absent, no offence under Section 420 of the Penal Code is made out. However, in the said case, the Apex Court also elaborates that there are two types of cases of cheating, first, complainant is induced fraudulently or dishonestly and second, by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced to do and there is distinction between mere breach of contract and the offence of cheating.

9. Mere breach of trust is defined in Section 405 of I.P.C., which reads as follows:

“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”.

10. From reading of the aforesaid section, it is explicit that in order to constitute offence of breach of trust, following ingredients are to be found; first, a person should have been entrusted with property or entrusted with dominion over the property, second, that person dishonestly misappropriated or converted to his own use that property or dishonestly used or disposed of that property, third, such misappropriation, conversion, used or disposed should be in violation of any direction of law prescribing mode in which such trust is to be discharged or of any legal contract under which the work was done.

11. In the present case, there is no entrustment of any property to the petitioner by the complainant, so question of any misappropriation without entrustment of property does not arise. The agreement between two is also not on record and no condition is mentioned in the complaint regarding mode and manner of time by the petitioner. So in view of the backdrop of the aforesaid fact, the Court finds that the allegation in the complaint is devoid of any ingredients of cheating and breach of trust though may be a case of breach of agreement, exclusively a dispute of civil



nature. Moreover, a civil remedy also exists to the complainant as the dispute may be resolved in the civil side. So having reached to the conclusion that *prima facie* no ingredients of offence of cheating and breach of trust is made out against the petitioner even after taking all facts stated in the complaint in entirety, hence, continuation of criminal proceeding in the matter would be abuse of the process of the court.

12. So, the impugned order dated 25.02.2011 as well as criminal proceedings in respect of the petitioner only is hereby set aside.

13. The application stands allowed.

(Arun Kumar, J)

sujit/-

AFR/NAFR	AFR
CAV DATE	NA
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