IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32666 of 2017

Arising Out of COMPLAINT CASE No. -2217 Year- 2014 District- MUZAFFARPUR

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Umesh Rai Son of Mahendra Rai, Resident of Mohalla- Gandhi Chowk, Pokhra, P.s.- Hajipur Town, District- Vaishali.

.... Petitioner

Versus

1. The State of Bihar.
2. Lalbabu Singh Son of Bhaguadev Singh, resident of Mohalla- Nandpuri Bhagwanpur, P.S.-Hajipur Town, District- Vaishali.

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For O. P. No. 2	:	Mr. Awadhesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-03-2018

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

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.) has been filed by the petitioner for quashing the order dated 11.03.2016 passed by the learned Chief Judicial Magistrate, Muzaffarpur in connection with Trial No. 1890 of 2016 arising out of Complaint Case No. 2217 of 2014 by which the petitioner has been summoned to face trial for the offences punishable under Sections 406 and 420 of the Indian Penal Code (for short 'IPC').

3. The prosecution case, in brief, according to the complainant is that the accused petitioner was known to him since

long. He came with his two of his relatives Harilal Rai and Jogendra Rai at his residential house and expressing urgent need of money he demanded Rs.5 lakh as friendly loan. He promised that he would return the amount in six months. On his assurance to return the loan amount, he gave Rs.75,000/- in cash and Rs.3,25,000/- by way of cheque to the petitioner. The cheque drawn on Syndicate Bank was encashed on 12.06.2013. It has been further alleged that after lapse of six months, when the petitioner did not return his money, he went along with those relatives to his house, but he refused to return the amount of loan whereafter a legal notice was sent, but he did not offered any reply to the notice. Lastly, it is alleged that since the younger brother of the petitioner is his son-in-law, he is taking undue advantage of the situation.

4. On the basis of the allegation made above, Complaint Case No. 2217 of 2014, was registered under Sections 406 and 420 of the IPC. The complainant was examined on solemn affirmation. Apart from the complainant, two witnesses were also examined in course of inquiry whereafter the learned Magistrate summoned the petitioner to face trial vide impugned order dated 11.03.2016.

5. Assailing the impugned order dated 11.03.2016, learned counsel for the petitioner submitted that there is no truth behind the allegation made in the complaint. Even if the entire allegations are believed to be true, none of the ingredients of the offences

punishable under Sections 406 and 420 for the IPC would be attracted in the present case. He submitted that it is a pure and simple case of money claim for which the complainant has remedy under civil law, but just in order to blackmail and coerce the petitioner, a criminal case has been initiated against him.

6. On the other hand learned counsel for the complainant submitted that it is a gross case of cheating and criminal breach of trust and, thus, the court below has rightly taken cognizance of the offences punishable under Sections 406 and 420 of the IPC.

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

8. 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**"."

9. Section 420 of the IPC prescribes punishment for the offence of cheating. It reads as under :-

> **"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."

10. The essential ingredients of Section 420 of the IPC are:

(i) cheating;
(ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and
(iii) mens rea of the accused at the time of making the inducement.

11. Section 406 IPC prescribes punishment for criminal breach of trust. Section 405 IPC defines the offence of criminal breach of trust. It 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 wilfully suffers any other person so to do, commits "**criminal breach of trust**"."

12. A careful reading of Section 405 of the 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.

13. Thus for the offence punishable under section 406 of the IPC, the prosecution must prove :-

(i) that the accused was entrusted with property or with dominion over it; and

(ii) that he (a) dishonestly misappropriated it, or (b) dishonestly converted it to his own use, or (c) used it, or (d) disposed of it in violation of any direction of law prescribing the mode in which such trust was discharged.

14. The gist of the offence prescribed under section 406 of the 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.

15. In the present case, looking at the allegations made in the complaint, I find that no allegation is made attracting the ingredients of the offence of cheating or criminal breach of trust punishable under Sections 406 and 420 of the IPC. Except the vague allegation that the petitioner is taking undue advantage of his relationship with the complainant, there is nothing on record to show that the petitioner had a dishonest intention since inception at the time of making inducement. There is also nothing to show that the petitioner misappropriated the amount in a dishonest manner. Merely, because the petitioner failed to return the loan amount of Rs.4 lakh taken from the complainant, it would not satisfy the ingredients of Sections 406 and 420 of the IPC, as failure to refund the amount does not make it an offence of cheating in absence of

any dishonest or fraudulent intention at the very inception.

16. In **Hari Prasad Chamaria vs Bishun Kumar Surekha And Ors [1973 (2) SCC 823]**, the complaint had filed a complaint against two accused persons, who was respondents in the proceeding before the Supreme Court stating that the complainant was running business at Samastipur in Bihar and Calcutta and the respondents were known to him and he had full faith on them. In order to start some business, he had talked to the respondents and stated that they would start transport business under the name and style of Drang Transport Corporation. It was further stated by the respondents that the complainant would be the proprietor of the said Corporation and the respondents would work as his agents. The complainant paid Rs.35,000/- to the respondents in Samastipur in January, 1967 and in March 1967, when the complainant went to Calcutta he found that the respondents were doing transport business, but he was not shown as the proprietor of that business as the assurance was given by the respondents that once the firm is registered, the complainant would be shown as the proprietor thereof and the respondents had agreed to settle the business accounts in the month of December every year. At one point of time, the complainant asked for refund of money and when the respondents did not comply with the demand of the complainant, the complaint petition was filed. Against the order of learned Magistrate taking

cognizance of the offence under Section 420 of the IPC, respondents had moved before this Court. This Court took view that the case of the complainant was based on contract and, accordingly, quashed the criminal proceedings. In an appeal against the order of this Court, the Supreme Court took note of the fact that there was nothing in the complaint to show that respondents had dishonest or fraudulent intention at the time the complainant parted with the amount of Rs.35,000/- or that the accused induced the complainant to pay Rs.35,000/- for business or that a representation was made by the respondents to him at or before the time the complainant paid money to them and that at the time the representation was made, the respondents knew the same to be false and, accordingly, dismissed the appeal by upholding the order of the High Court.

17. In **Joseph Salvaraj A vs State Of Gujarat & Ors [2011 (7) SCC 59],** the complainant was an Administrative Officer in "Amaaru Family Education Trust" at Ahmedabad. He was close with one Shri Dharmendra P. Rami @ Laldbhai, who was running business of Siti Cable in Bapi Nagar area at Ahmedabad. He had occasion to watch "God TV", a religious channel at Hyderabad and he was deeply influenced by that channel. He approached Mr. Lalabhai to have that channel in the bouquet of channels offered by him and also contacted the company to allow broadcasting of "God TV" in certain areas of Ahmedabad through Siti Cables,

Ahmedabad. Broadcasting of “God TV” commenced in certain zone of Ahmedabad. It was stated in the complaint that three cable operators including Mr. Lalabhai had agreed to broadcast, religious channel "God TV" at Ahmedabad, after the company had agreed to pay a sum of Rs.10 lacs to Mr. Lalabhai. Apparently, the amount was not paid to Mr. Lalabhai and the cable operators, who had started broadcasting of “God TV” and they were pressurizing the complainant for payment of the said amount. Some communications letters were sent to the company and subsequently, the company through letter dated 18.07.2016 denied all accusations and liabilities. On the aforesaid allegations, an FIR was lodged against the company. The Company challenged the said FIR before the High Court under Section 482 of the Cr.P.C. which was rejected and the petition was dismissed. On the background of the aforesaid facts, the Supreme Court opined that there was no cheating or dishonest inducement for delivery of property or breach of trust by the appellant and, accordingly, quashed the FIR.

18. In **S.W. Palanitkar & Ors vs. State Of Bihar & Anr. [2002 (1) SCC 241]** it has been laid down by the Supreme Court that 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.

19. In the present case, looking at the allegations made in the complaint, on the face of it there appears to be a simple breach of trust of a contract by the petitioner for which an effective remedy is to approach the civil court for the loss, if any caused, due to breach of trust. The mere fact that the petitioner failed to pay the money to the complainant would not make out a case of cheating or criminal breach of trust. To make out a case of cheating, a dishonest intention of the accused at the time of inducement is a must, which is completely lacking in the present case. There is also no iota of allegation as to dishonest intention or misappropriation. To make out a criminal breach of trust, it is not sufficient to show that money has not been returned by the accused rather it must be shown that accused dishonestly retained the same.

20. In view of the discussions made above, even if entire allegations made in the complaint are taken at their face value, in the opinion of this Court, basic essential ingredients of dishonest intention or misappropriation and cheating are wanting. It has repeatedly been said by the Supreme Court in its various judgments that criminal proceedings are not a short-cut for other remedy. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of the

offences punishable under Sections 406 and 420 of the IPC are wanting, the impugned order is liable to be set aside.

21. Accordingly, order dated 11.03.2016 passed by the learned Chief Judicial Magistrate, Muzaffarpur in Trial No. 1890 of 2016 arising out of Complaint Case No. 2217 of 2014 by which the petitioner has been summoned to face trial for the offences punishable under Sections 406 and 420 of the IPC and the entire criminal proceedings of the aforesaid complaint case are hereby quashed. The application stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.03.2018
Transmission Date	24.03.2018