

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7352 of 2016

Arising Out of PS.Case No. -1500 Year- 2015 Thana -EAST CHAMPARAN COMPLAINT
District- EASTCHAMPARAN (MOTIHARI)

=====

1. Ranjeet Kumar Rajan S/o Sri Braj Bhushan Prasad R/o Mauja Gopalpur
West, P.S. Town Motihari, Distt. - East Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Sunita Devi W/o Sri Vijay Kumar Gupta R/o Mauja Chhotu Bariyarpur,
P.S. Chhatauni, Distt. - East Champaran

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Advocate

For the Opposite Party/s : Mrs. Sahin Begum (APP)

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 01-11-2018 Heard learned counsel for the petitioner as well as
learned APP.

2. Instant petition has been preferred against the
order dated 28.10.2015 passed by the learned lower court in
connection with Complaint Case No. 1500/2015 whereby and
whereunder, petitioner has been summoned to face trial for an
offence punishable under Section 420 of the IPC.

3. It has been submitted on behalf of the petitioner
that whatever allegation has been attributed against him did not
justify summoning of the petitioner to face trial for an offence
punishable under Section 420 of the IPC. It has also been
submitted that there happens to be inconsistency with regard to



mode of payment of consideration amount. It has also been submitted that even in worst case, it happens to be a civil cause in the background of breach of compromise/contract and for that, a civil suit would have been instituted instead of criminal proceeding. It has further been urged that civil suit has already been instituted. So, this litigation should not be allowed to prolong. It has also been submitted that there happens to be no ingredient visible to justify summoning of the petitioner to face trial for an offence punishable under Section 420 of the IPC.

4. On the other hand, learned APP opposed the prayer and submitted that after going through the materials having over the record, the learned lower court had summoned the petitioner to face trial for an offence punishable under Section 420 of the IPC.

5. There happens to be consistency over the settled principle of law that even if a particular cause of action divulging the criminal act as well as civil cause could be prosecuted under both heads or either of the same. In *Vesa Holding P. Ltd v. State of Kerala as reported in 2015 CrLJ 2455*, it has been held as follows:-

“8. From the decisions cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract



would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under [Section 420](#) of the Indian Penal Code can be said to have been made out.

9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under [Section 420](#) IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under [Section 482](#) Criminal Procedure Code to quash the proceedings.”

6. That being so, mere having colour of civil cause

or pendency of civil suit could not justify quashing of the criminal proceeding. So far allegation is concerned, it is evident that there



was finalization of negotiation amongst the petitioner as well as complainant and after receipt of Rs. 4,60,000/-, document was executed by the petitioner in presence of witnesses but, on one pretext or the other, petitioner managed whereupon, the document could not be produced before the Sub-Registrar for registration. In spite of repeatedly approaching the petitioner, he did not oblige rather, abused and threatened of dire consequences. The aforesaid conduct speaks itself with regard to intention whereunder petitioner succeeded in getting Rs. 4,60,000/- from the complainant on the pretext of sale.

7. The aforesaid material is found duly surfaced during course of an enquiry, consequent thereupon, the order impugned did not require interference and is, accordingly, dismissed.

(Aditya Kumar Trivedi, J)

perwez

U		T	
---	--	---	--

