

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41641 of 2017

Arising Out of PS.Case No. -708 Year- 2014 Thana -PHULWARI District- PATNA

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1. Ashwani Kumar Singh Son of late Hari Dayal Singh Resident of 2nd Floor,
Krishna Building, S.P. Verma Road, P.S. Gandhi Maidan, Distt.- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Rabindra Nath Singh Son of late Keshav Prasad Singh Resident of Quarter No.
301, C.D., New Colony, P.O. & P.S.- Khagaul, Distt- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar, Adv.
For the Opposite Party/s : Mr. Kumar Virendra Narayan, APP
For the Opposite Party No.2 : Mr. Anis Akhtar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 12-04-2018

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

2. This application under Section 482 of the Code of
Criminal Procedure has been filed by the petitioner for quashing the
order dated 30.07.2015 passed by the learned Judicial Magistrate 1st
Class, Patna in connection with Phulwarisharif P.S.Case No. 708 of
2014 by which he has taken cognizance of the offences punishable
under Sections 406 and 420 of the Indian Penal Code (for short 'IPC')
and summoned the petitioner to face trial.

3. The prosecution story in brief, according to the



informant Rabindra Nath Singh, is that the petitioner being the Managing Director of Ashwani Enterprises Pvt. Ltd. executed a registered sale deed of a plot measuring 2800 sq.ft. in his favour on 15.03.1997 and gave possession of the same on 25.04.1999 and since then he is coming in its possession. After retirement, when he wanted to construct house on the aforesaid plot, the petitioner started creating obstruction. He wanted to take back the plot from the informant for extension of his school premises. When he refused to oblige the petitioner, he was threatened and under a conspiracy to grab the plot he blocked access to the said plot from all sides causing obstruction in construction of his house. The informant further alleged that in the sale deed and map 40 feet and 20 feet road access way adjacent to plot in southern and western side respectively have been shown but due to encroachment made by the petitioner the plot is not accessible. It is also alleged that in order to exert pressure he got opened windows of the school towards his plot and the plot is being used for dumping garbage of the school.

4. On these allegations, Phulwarisharif P.S. Case No. 708 of 2014 was registered and investigation was taken up. On completion of investigation, the police submitted charge-sheet under Sections 406 and 420 of the IPC. Taking into consideration the materials available on record, learned Judicial Magistrate 1st Class, Patna vide order



dated 30.07.2015 took cognizance of the offences under Sections 406 and 420 of the IPC and summoned the petitioner.

5. Assailing the aforesaid order dated 30.07.2015, learned counsel for the petitioner submitted that from perusal of the FIR it would be evident that the entire dispute is regarding right to easement over the plot and except this, all the allegations are vague and superfluous. He submitted that in the FIR itself the informant has admitted that as promised the petitioner had executed the sale deed in favour of the informant and had handed over possession of the plot to him way back in the year 1999 itself. There is no allegation of any criminal breach of trust or cheating against the petitioner and in that view of the matter the entire investigation made by the police, which led to submission of charge-sheet under Sections 406 and 420 of the IPC was misdirected. According to him, even the learned Magistrate failed to apply his judicial mind and mechanically took cognizance of the offences.

6. Per contra, learned counsel appearing for the State submitted that the allegations made in the FIR do attract the ingredients of the offences punishable under Sections 406 and 420 of the IPC and the same were found true in course of investigation and, thus, no illegality has been committed by the learned Magistrate in taking cognizance of the offences and summoning the petitioner.



7. Learned counsel appearing for the informant submitted that right from the beginning the intention of the petitioner was dishonest. He submitted that the petitioner has been made accused in several other cases of identical nature. The petitioner is a land mafia and is in the habit of cheating innocent persons. While executing the sale deed the petitioner had stated that the plot is accessible from two sides and believing upon his words the informant had invested his hard earned money, but subsequently when he wanted to construct the house, he blocked the plot from all sides making it impossible for the informant to erect any construction.

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

9. Cognizance has been taken of the offences punishable under Sections 406 and 420 of the IPC. Section 406 IPC prescribes punishment for the offence of criminal breach of trust. Section 405 IPC defines criminal breach of trust, which 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 willfully suffers any other person so to do, commits "**criminal breach of trust**".”



10. The following ingredients would be essential to attract the operation of Section 405 of the IPC :-

- (a) The accused must be entrusted with property or dominion over property;
- (b) The person so entrusted must;
 - (i) dishonestly misappropriate or convert to his own use that property,
 - (ii) dishonestly used or disposed of that property or willfully suffered any person to do so in violation of any direction of law prescribing the mode in which such trust was discharged.

11. Thus, entrustment of property is an essential requirement before any offence under Section 405 of the IPC takes place. In order to constitute a legal entrustment, the complainant must be the owner of the property, there must be transfer of possession and such transfer must be actual transfer. Such transfer should be made to somebody who has no right other than that of a custodian.

12. Here in the present case, the case of the informant is that the petitioner had sold the plot to him and in the sale deed and map approach road to the plot in southern and western side was shown, but the land of road has been unauthorizedly occupied by the petitioner in the manner that the plot has become inaccessible to the informant. Hence, what is important to be seen is that there is no legal entrustment of the property by the informant to the petitioner but it is



a case of illegal and unauthorized occupation of road of land.

13. Thus, in absence of any legal entrustment ingredients of the offence punishable under Section 406 of the IPC are not attracted.

14. The only other penal provision under which cognizance has been taken is Section 420 of the IPC which 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.”

15. In the case of *V.Y. Josh Vs. State of Gujarat [(2009) 3 SCC 78]*, the Supreme Court held that the offence of cheating cannot be said to have been made out unless the following ingredients are fulfilled :-

“(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.”



16. 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 absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the IPC can be said to have been made out.

17. Here in the present case, there is nothing to show that the petitioner had dishonest intention at the time of making promise or representation. It is the case of the informant that as per negotiation the petitioner executed the sale deed and handed over possession of the plot. Any dispute after coming into possession of the property relating to illegal occupation of approach road would not constitute an offence of cheating.

18. In that view of the matter, I am of the considered opinion that neither the offence of criminal breach of trust nor the offence of cheating is made out in the present case. In absence of the ingredients of any criminal offence, the impugned order dated 30.07.2015 passed by the learned Judicial Magistrate 1st Class, Patna in connection with Phulwarisharif P.S. Case No. 708 of 2014 whereby he took cognizance of the offences punishable under Sections 406 and 420 of



the IPC and summoned the petitioner to face trial cannot be sustained.
Accordingly, the same is set aside.

19. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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