IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.500 of 2018

Arising Out of PS.Case No. - 629 Year- 2017 Thana -Kotwali District- PATNA

==

1. Smt. Renu Verma, Wife of Late Sanjay Kumar
2. Saurav Kumar, Son of Late Sanjay Kumar
3. Gaurav Kumar Verma @ Gaurav Kumar Son of Late Sanjay Kumar

All Resident of Gulabbagh Market, Hathuwa Market, P.S.-Kadamkuan, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Home Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General, Patna Range, Patna.
4. The Senior Superintendent of Police, Bihar, Patna,
5. The City Superintendent of Police, Patna. District-Patna.
6. Sri Shivli Nomani, Dy. S.P. Town, Kotwali Police Station, Patna.
7. Sri Ram Shankar Singh, Officer-In-Charge, Kotwali Police Station, Patna.
8. Sri Shiv Shankar Dubey, Investigating Officer, Kotwali Police Station, Patna.

.... Respondent/s

==

Appearance:

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate with Mr. Pranav Kumar, Mr. Sumit Kr Jha and Mr. Rajat Kumar Tiwary, Advocates.
For the State:		Mr. Ravi Verma, AC to GP 4.
For the Respondent/s	:	Mr. Anshul and Mr. Avinash Kumar, Advocates.

==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 02-07-2018

The petitioners have invoked the extra-ordinary writ jurisdiction of this Court for quashing of the First Information Report bearing Kotwali P.S. Case No. 629 of 2017 dated 18.11.2017 registered for the offences alleged under Sections 409 / 417 / 418 / 419 / 420 / 461 / 468 / 504 /506 /120B of the Indian Penal Code. A prayer has been made for issuance of the writ of mandamus directing the Investigating Officer and other police officers to refrain from carrying out any investigation in connection with Kotwali P.S. Case No. 629 of 2017. An alternative prayer has also been made to issue an appropriate writ / order / direction in the nature of a mandamus commanding the respondents to get Kotwali P.S. Case No. 629 of 2017 investigated by any other agency including the C.B.I.

2. The petitioners claim that they belong to a reputed business family who deals in gold and diamond jewelries. Petitioner no. 1 is the wife whereas petitioners no. 2 and 3 are the sons of one late Sanjay Kumar, who was the Proprietor of M/s Patna Hira Panna Jewelers at Patna. It is the case of the petitioners that the informant of the case in question has lodged the present F.I.R. just after a couple of days when a legal notice as contained in Annexure-4 to the Writ Application was served upon the informant and his partner in the business firm, namely, M/s Surya Nestbuild Ltd. According to the First Information Report, on 21.10.2009 a Development Agreement was executed between M/s Surya Nestbuild Ltd. (hereinafter referred to as 'the Company') on the one hand and late Sanjay Kumar, S/o Sri Dindayal Prasad on the other hand. Again on

25.06.2012 late Sanjay Kumar, late Shekhar Sharan Kumar, Sri Sushil Kumar and Sri Kundan Kumar, all four sons of Sri Dindayal Prasad, signed another Development Agreement in respect of same land of 4 ½ Kathha situated at Fraser Road, Patna bearing Plot No. 65, Survey No. 6. It is alleged that all the aforesaid persons represented to the informant that the aforesaid plot is not involved in any dispute. The informant further alleged that the aforesaid persons had taken a sum of rupees two crores twenty lakhs from the informant company as advance, thus had promised to put them in possession very soon. It is alleged that when the company took efforts to get the map sanctioned for construction of a building it came to light that there is a land dispute pending in the Civil Court at Patna being Title Suit No. 303 of 1979 and an injunction order is operating in the said case. It is alleged that when the informant talked about this to the accused persons they made him to believe that the injunction order shall get vacated very soon but it did not happen.

2.1 It is the case of the informant that by concealing the fact about pendency of the case the accused persons entered into the agreement and took rupees two crores twenty lakhs from the informant. After the execution of the agreement, two of them, namely, Sanjay Kumar and Shekhar Sharan Kumar died. It is further alleged that in the meantime (1) Sri Sushil Kumar, (2) Sri Kundan Kumar, (3) Sri Dindayal Prasad, (4) Sri Santosh Kumar, (5) Sri Saurabh Kumar, (6) Sri Abhishek Kumar and (7) Smt. Renu Verma, all residents of Mohalla Gulab Bagh Market, Hathua Market, P.S. Kadamkuan, District Patna acted in connivance and in concert with each other and by concealment of the fact regarding execution of the Development Agreement and pendency of the Title Suit got sanctioned a loan of crores of rupees by mortgaging the said land with the State Band of India. The informant alleged that when he was demanding his money from the aforesaid seven persons, they abused the informant in presence of his friends and asked him to do whatever he likes as the accused will not return the money. It is stated that late Sanjay Kumar, prior to his death, had in presence of the informant told his two sons Saurav Kumar and Gaurav Kumar that the amount of rupees two crores twenty lakhs is to be returned to the informant which his sons also agreed and promised. It is alleged that the accused persons indulged in beating when protest was made. On these allegations, it is submitted, the accused persons have played fraud and have deprived the informant from rupees two crores twenty lakhs by misappropriating the money received in the name of fake agreement. A copy of the written complaint giving rise to the First Information Report being Kotwali P.S. Case No. 629/2017 has been brought on record by way of Annexure-1 to the Writ Application.

3. In course of argument Mr. Y.V. Giri, learned Senior Counsel assisted by Mr. Pranav Kumar, learned Advocate on record, has basically argued that it is a case of purely civil dispute which has been tried to be given a colour of criminal proceeding. Learned senior counsel submits that so far as these petitioners are concerned it would be evident from the Agreements, placed at Annexures 2 & 3 to the present Writ Application, that they were not the signatories to those Agreements and hence the allegation of fraud and cheating with the informant cannot be attributed to these petitioners.

4. Mr. Giri has drawn the attention of this Court towards various clauses of the Development Agreement dated 21.10.2009 (Annexure-2) and also to the Agreement dated 25.06.2012 (Annexure-3) to submit that according to the stipulations provided in the Agreement, on 21.10.2009 when the first agreement was executed the informant was well aware of the names of the owners who had acquired the land in question by virtue of a registered sale deed executed on 17.07.2010 and 05.04.2011. He submitted that under Clause 2 of the Development Agreement, the developer has represented that he is prima facie satisfied with regard to the title of the property, however, the developer also agreed that they had caused all necessary searches with regard to the marketability of the title of the property. Mr. Giri also submits that when the second agreement

was being executed on 25.06.2012, on the same day, a separate agreement was executed between Sri Sanjay Kumar as first party and Ms. Ruby Singh, daughter of Mr. Ram Chandra Singh as the second party whereunder with reference to the Development Agreement dated 25.06.2012 it is provided that in order to set at rest the dispute regarding the land on which the proposed building is to come the second party undertook and assured to the land owner that she will get the aforesaid suit compromised within a time as early as possible with Tahmina Imam and others. In view of this work undertaken by the second party, the first party agreed to give 500 Sq. Ft. Super Built-up Area, i.e., the front portion on the 1st Floor in the proposed commercial building named as "Prema Shopping Centre". It is the submission of Mr. Giri, learned Senior Counsel that having entered into a fresh Development Agreement on 25.06.2012 and then being aware about the pendency of the Civil Suit after giving consent to the execution of agreement with Ms. Ruby Singh, the informant cannot make an allegation that he was not aware of the pendency of the Title Suit and that till date the injunction order has not been vacated.

5. It is further submitted on behalf of the petitioner that a legal notice dated 16.11.2017 (Annexure-4 to the Writ Application) was sent on behalf of Sri Dindayal Prasad to the informant and one of the partners of the firm. In the legal notice the informant was told that

as per the terms and conditions the construction of the building was to be done within two years and six months plus a grace period of six months, total of three years, from the date of agreement which has already expired on 24.06.2015 and, therefore, the person sending the notice had decided to cancel the agreement. Compensation of Rs. 50,000/- per month was also claimed from the informant. It is submitted that immediately after receipt of the legal notice, the present F.I.R. has been lodged. So far as the creation of mortgage with the State Bank of India is concerned, learned senior counsel submits that these petitioners are guarantors to the loan obtained from the State Bank of India by the executants of the Development Agreement, therefore, only because the petitioners have stood guarantors to loan obtained from the State Bank of India it cannot be alleged that these petitioners have acted in connivance and in concert with the borrowers who are executants of the Development Agreement in the matter of cheating and playing fraud with the informant. It is also pointed out that so far as the Compromise Agreement dated 31.01.2018 (Annexure-5) to the Writ Application is concerned, the said mutual agreement no doubt bears the signature of the petitioners also but the fact remains that the petitioners have alleged that their signatures were obtained on the mutual agreement by applying force and for that a separate case has been registered.

6. The learned senior counsel has relied upon two judgments of this court rendered by a learned co-ordinate bench of this Court in the case of **Md. Mukhtar Quaraishi & Ors. Vs. The State of Bihar & Ors.**, reported in 2018 (1) PLJR 409, and the in the case of **Nand Kishore Mahto & Ors. Vs. The State of Bihar & Anr.**, reported in 2018 (1) PLJR 429. In course of argument reliance has been placed on Paragraphs 9, 10, 11 and 12 of the judgment rendered in the case of **Nand Kishore Mahto & Ors.** (Supra) whereunder the judgments of the Hon'ble Apex Court in the case of **Indian Oil Corporation Vs. NEPC India Ltd.** reported in (2006) 6 SCC 736, **Joseph Salvaraja A. Vs. State of Gujarat & Ors.** reported in (2011) 3 SCC (Cri.) 23, and the judgment in the case of **Inder Mohan Goswami Vs. State of Uttraranchal** reported in (2007) 12 SCC 1 have been referred to and relied upon. In his submission Mr. Giri submits that the entire narration of facts clearly demonstrate that the allegations levelled in the First Information Report are purely of a civil nature which would at best constitute a civil dispute but it has been given a colour of criminal case, therefore, the First Information Report in so far as it relates to the petitioners is fit to be quashed and cancelled.

7. On the other hand, a Counter Affidavit has been filed on behalf of the Deputy Superintendent of Police, Law & Order, Patna

who has denied the allegations levelled against the official respondents and has stated that those are without substance. As regards the allegations and investigations pursuant thereto it is stated that it has come to the light that the Development Agreement was signed between the accused persons and the informant and this petitioner, with an intention to cheat the informant, not only mortgaged the property to the State Bank of India and had taken a loan of rupees two crores in the year 2012, got it restructured in 2013 to rupees three crores but later on had not made payment and on this account the State Bank of India had taken possession of the land in question. It is also submitted that as a matter of fact this family used to cheat persons by using the name of other family members. All the family members used to handle the business even before the death of late Sanjay Kumar but now they want to get advantage of death of Sanjay Kumar. It is further stated that the police has enquired into the allegations of confinement by the informant or his henchmen and learnt that the petitioners are deliberately making false allegation and as per CCTV record and Visitors Register of the residential office and office premises it was apparent that petitioners no. 2 and 3 with their sister (Saloni Verma), wife of petitioner no. 3 (Shikha), father-in-law of petitioner no. 3 (Amit Kumar) and their uncle had approached the informant for compromise and a series of meetings had been held on different dates in between 28.01.2018 to 02.02.2018, therefore, the allegation of confinement is false and fabricated. Regarding the allegation of forcibly taking signature on mutual agreement, the investigation has revealed that the allegation is false as it has deliberately been suppressed by the petitioners that at their instance their grand-father (who is in jail) had also signed the agreement and the said agreement was verified by the Assistant Jailor.

8. In order to assist the Court the informant has also appeared and filed a Counter Affidavit, copy of which has been served on the learned counsel representing the petitioners. The informant has brought to the notice of this Court that the Anticipatory Bail Application of the petitioners has been dismissed upto this Court vide order dated 21.05.2018 passed in Cr. Misc. No. 9095 of 2018. It is submitted that the mutual agreement dated 31.03.2018 was signed not only by these petitioners but also by their uncles, namely, Sushil Kumar and Kundan Kumar. It is stated that the grand-father of petitioners no. 2 & 3 had also consented to the said mutual agreement and at the relevant time the grand-father of petitioners no. 2 & 3 was in judicial custody, therefore, he had signed the agreement before the jail authority on 01.02.2018, it is thus submitted that the allegation of applying force in the matter of execution of mutual agreement is baseless and is only an attempt to mislead this Court. It is further

submitted that the loan was obtained from the State Bank of India in the name of M/s Prema Jeweler in which petitioner no. 2 is a partner and is also a guarantor to the loan in question. It is also submitted that petitioners no. 1 and 3 are the guarantors to the loan, the firm being a family firm the petitioners herein were instrumental in procuring the loan and are the ultimate beneficiaries of the loan amount which they obtained by mortgaging the land in question and then committed default in repayment of loan leading to taking over of possession of the land in question by the State Bank of India. It is also submitted that the petitioners are in fact habitual cheaters who are running a cheating racket in the garb of the jewelry business, they have created multiple firms, all named and designed on the names of leading and reputed jewelers of Patna and India although the petitioners family have no relations whatsoever with the original firms. It is further submitted that the case is still under investigation and at this stage it would not be just and proper to quash the First Information Report and stop the investigation.

9. Having heard learned senior counsel representing the petitioners, learned counsel representing the State as also learned counsel representing the informant I am of the opinion that even though the transaction in question relates to development of a piece of land owned by late Sanjay Kumar and others, who are the signatories

of the Development Agreement, but the allegations are that at the time of entering into the Development Agreement the owners had represented to the informant that the land in question is free from any kind of dispute and based on such representation the informant parted with a sum of rupees two crores twenty lakhs as an advance. If this part of the allegations is proved, *prima facie*, in course of investigation it cannot be said that no case constituting a criminal offence will not be made out. Further allegation is that after execution of the Development Agreement when the facts with regard to the pendency of the Title Suit came to the notice of the informant, the informant was given to understand that the injunction order in the Civil Suit shall be getting withdrawn very soon but the fact remains that the informant initially entered into the Development Agreement and gave a sum of rupees two crores twenty lakhs to the executants of the Development Agreement on misrepresentation.

10. The case of the petitioners are that they were not parties to the Development Agreement, in the opinion of this Court, even if prima facie it appears on perusal of the development agreement that these petitioners have not put their signatures thereon, the Court cannot lose sight of the fact that there are allegations of conspiracy under which all these petitioners are said to have participated in concealment of the facts regarding pendency of the

Civil Suit and they were very well knowing that the development agreement has been executed with the informant, these petitioners actively participated in the matter of obtaining loan / enhancement of cash credit facility related to the business concern in which they are partners and directly interested, the conspiracy angle is still under investigation. The prima facie materials available on the record are admitted to the extent that these petitioners are the partners of the business concern in whose account the land in question in respect of which development agreement has been executed with the informant was provided as security to the State Bank of India. These petitioners have stood as guarantors to the loan, the allegation is that they had in connivance and in concert with each other concealed the fact about the existence of the development agreement and pendency of the title suit while providing the land in question as security to the Bank. In the opinion of this Court, if these allegations are found true in course of investigation the same may lead to initiation of a criminal proceeding and, therefore, at this stage when the investigation is still going on it would not be just and proper for this Court to quash the First Information Report itself.

11. As regards the further part of the allegations contained in the First Information Report, even though Mr. Giri has strenuously argued that the mutual agreement dated 31.01.2018 was got executed

under threat and coercion for which a separate case has been lodged, this Court has taken note of the stand disclosed by the Deputy Superintendent of Police (Law & Order) whereunder till date in course of investigation they have found that the said part of the allegations is not true. This Court while dealing with the present application would not be willing to make any observation with regard to the correctness of the allegations made in the First Information Report. However, it is definitely the duty of the Court to examine the submissions of the learned counsel representing the petitioners as to whether or not it is a case of purely civil nature which has been tried to be given a colour of criminal proceeding. Judgments of the Hon'ble Apex Court on which reliance has been placed by Mr. Giri, learned senior counsel, have been rendered in a fact situation where the Hon'ble Apex Court found that for a purely civil dispute a criminal proceeding was launched. In the present case, however, I find that the allegations contained in the First Information Report are serious allegations of misrepresentation and fraud played by the accused persons not only at the time of execution of the agreement on 21.10.2009 but even after execution of the second agreement on 25.06.2012. The allegation is that the accused persons including these petitioners had participated actively in obtaining loan / cash credit facility from the State Bank of India by providing the land in the development agreement as a security. The allegation is that not only the informant has been cheated but even the Bank has been cheated because of such mortgage created by the owners in connivance with the present petitioners who stood as guarantors.

12. In the case of **Dinesh Bhai Chandubhai Patel and Ors. Vs. State of Gujarat & Ors.**, reported in 2018(1) PLJR (SC) 326, the Hon'ble Apex Court was dealing with a case where there was an allegation that one person by name Dineshbhai Chandubhai Patel in conspiracy with several other named persons jointly defrauded and deceived the complainant by taking advantage of their illiteracy, poverty and unawareness got executed bogus Power of Attorney with bogus signatures in relation to the disputed land, the Hon'ble Gujarat High Court had been pleased to quash the First Information Report in part against which both the parties had moved the Hon'ble Supreme Court. The accused persons were praying for quashing of the F.I.R. whereas the informant was praying for setting aside of the High Court order quashing the FIR in part. In paragraph 26, 27 and 28, the Hon'ble Apex Court held as under:-

> "26. The law on the question as to when a registration of the FIR is challenged seeking its quashing by the accused under Article 226 of the Constitution or Section 482 of the Code and what are the powers of the High Court and how the High Court should deal with

such question is fairly well settled.

27. This Court in State of West Bengal & Ors. Vs. Swapan Kumar Guha & Ors. (AIR 1982 SC 949) had the occasion to deal with the issue. Y.V. Chandrachud, the learned Chief Justice speaking for Three Judge Bench laid down the following principle:

“Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting the materials for proving the offence.

The condition precedent to the commencement of investigation under S.157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under S.157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizance offences."

28. Keeping in view the aforesaid principle of law, which was consistently followed by this Court in later years and on perusing the impugned judgment, we are constrained to observe that the High Court without any justifiable reason devoted 89 pages judgment (see- paper book) to examine the aforesaid question and then came to a conclusion that some part of the FIR in question is bad in law because it does not disclose any cognizable offence against any of the accused persons whereas only a part of the FIR is good which discloses a prima facie case against the accused persons and hence it needs further investigation to that extent in accordance with law.

13. In the case of **Rajesh Bajaj Vs. State NCT of Delhi & Ors.** reported in (1999) 3 SCC 259 in paragraph 9, 10 and 11, the Hon'ble Apex Court held as under:-

9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a

meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. In **State of Haryana Vs. Bhajan Lal** (supra) this Court laid down the premise on which the FIR can be quashed in rare cases. The following observations made in the aforesaid decisions are a sound reminder:

"103.We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would

> elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code (illustrations f) is worthy of notice now:
>
> "(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."
>
> 11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

14. In my considered opinion this case is not one of purely civil dispute and cannot be closed by interfering with the investigation at the threshold. Investigation is still going on and in the nature of the offences alleged it would not be just and proper for this Court to

invoke its extra-ordinary writ jurisdiction which is regulated by a self restraint code.

15. The Writ Application has no merit. It is accordingly dismissed.

(Rajeev Ranjan Prasad, J)

Dilip /Arvind

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.07.2018
Transmission Date	03.07.2018