

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.60463 of 2017

Arising Out of PS.Case No. -772 Year- 2017 Thana -GAYA COMPLAINT CASE District- GAYA

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1. Harendra Kumar Singh, S/o Late Ram Pravesh Singh, Resident of Village- Gere, P.S.- Mufasil, Town and District- Gaya (Bihar).
 2. Amresh Kumar Singh, Son of Shri Dilip Singh, Resident of Mohalla-Sukhdev Nagar, Police Station- Muffasil, District- Gaya (Bihar).

.... Petitioners

Versus

1. The State of Bihar.
2. Kumar Bhartendu, S/o Late Bundi Prasad, Resident of Asha Singh More, P.S.- Rampur A.P. Colony, District- Gaya, being one of the directors of M/s Vishnu Vihar Developer Pvt. Ltd. having its office at House No. M-88, Asha Singh More, P.S.- Rampur A.P. Colony, District- Gaya.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Gautam Kejriwal, Advocate
Mr. Alok Jha, Advocate
Mr. Rahul Srivastava, Advocate
For the Opposite Party No.2: Mr. Ajay Kumar Thakur, Advocate
Mr. Ravi Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-08-2018

Heard Mr. Gautam Kejriwal, learned counsel for the petitioner and Mr. Ajay Kumar Thakur, learned counsel for the 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 petitioners for quashing the order dated 17.08.2017 passed by the learned Chief Judicial Magistrate, Gaya in Complaint Case No.772 of 2017 whereby the petitioners have been summoned to face trial for the offences punishable under Sections 406, 420, 467 and 323 of



the Indian Penal Code.

3. It is submitted by Mr. Kejriwal, learned counsel for the petitioners that the petitioners and other land owners have been roped in the aforesaid criminal complaint by the opposite party no.2 to pressurize them to agree to illegal demands of the opposite party no.2. He contended that the opposite party no.2 has been performing the work of construction in absolute violation of the development agreement, which is causing financial loss to the intending purchasers by presenting rosy picture of the project but the ground reality being totally different, the petitioners and other land owners have taken action against the opposite party no.2 as a result of which the instant complaint has been filed in order to coerce the petitioners and others. He has pleaded that the dispute existing between the petitioners and the opposite party no.2 is purely civil and contractual in nature and the criminal complaint is an abuse of the process of the Court.

4. On the other hand, Mr. Ajay Kumar Thakur, learned counsel for the opposite party no.2 submitted that there is no illegality in the order impugned whereby the petitioners have been summoned to face trial for the offences punishable under Sections 406, 420, 467 and 323 of the Indian Penal Code. He contended that on the basis of agreement, the opposite party no.2 being a construction company started its work and has completed



30% of the estimated work. In the meantime, the accused persons by their own acts of omission and commission breached the trust imposed upon them. They created all kinds of disturbances so that the work may not be completed within the stipulated time. Being aggrieved by the act of omission and commission of the petitioners and other accused persons, the opposite party no.2 filed Title Suit No.58 of 2016 for carving out the road for giving an approach to the flat owners. He contended that the petitioners have not only taken Rs.50,00,000/- as loan from the opposite party no.2 but have also refused to return the amount on demand and when the opposite party no.2 demanded the money back the petitioners and others armed with deadly weapon came at the project place, stopped the work and abused the workers and forcibly ousted them from the work place. He contended that these acts would certainly attract the ingredients of the offences under which the Magistrate has found a prima facie case to be made out.

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

6. The complaint case has been filed by one Kumar Bhartendu, one of the Directors of M/s Vishnu Vihar Developer Pvt. Ltd. (for short 'the Company'). In this complaint, he has alleged that an agreement was executed between the Company and the accused persons on 28.08.2015 for the purpose of construction



of residential flats in the name of Luxury Homes. As per agreement, it was agreed that the accused persons would be handed over a share of 42% of the building so to be constructed within a period of two years and, accordingly, the Company commenced the construction work and completed about 30% of the same. The accused persons, however, were consistently disturbing the construction work. They did not mark 42% share of duplex causing difficulty to the Company in finalizing the loan. He further alleged that the accused persons demanded Rs.50,00,000/- as loan with promise to return the same by November, 2016 but, on demand, they did not return the loan amount. They further demanded a sum of Rs. one crore. It is further alleged that the petitioner along with 3-4 unknown persons caused disturbances at the work site on 23.11.2016 and when the opposite party no.2 raised objection, the accused persons used abusive words and threatened to kill if the loan amount is demanded back. A meeting was also held between the Company and the accused persons on 13.12.2016 but without any outcome. The Company is ready to complete the work under agreement but due to the disturbance caused by the accused persons the Company has been put in loss. Seeking no way out, the Company sent notices to the accused persons on 27.01.2017 and 20.05.2017, but none of the notices were replied, which again reflect the mala fide and dishonest intention of the accused persons



to grab the aforesaid sum of rupees fifty lacs.

7. On the basis of these allegations, the court took cognizance of the offence and conducted inquiry under Section 202 of the Cr.P.C. In course of inquiry, altogether four witnesses, namely, Jai Prakash Singh, Rahul Singh, Suleman Mansoori and Saroj Kumar were examined in support of the complaint.

8. After conducting inquiry, the learned Magistrate vide order dated 17.08.2017 summoned the petitioners to face trial for the offense mentioned above.

9. Having heard the parties and perused the record, I find that the admitted case of the opposite party no.2 as per his version in the complaint petition is that there is a development agreement among the land owners i.e., accused persons including the petitioners and the Company in which the complainant is one of its directors. In the said development agreement, the understanding between the Company and the land owners was carved out in broad terms, which has been accepted by them with open eyes and understanding of their interest.

10. The manner in which the allegations have been levelled in the complaint, apparently, goes to suggest that the dispute between the parties is purely contractual and commercial in nature. It would be evident that the opposite party no.2 seeks execution of the terms of the agreement to his own satisfaction. The



dispute relating to execution of contract between the parties is admitted for which a civil suit has also been filed in the court of Sub-Judge-I, Gaya.

11. In the background of the facts stated in the complaint, it is difficult to hold that the ingredients of the offences punishable under Sections 406, 420 and 467 of the Indian Penal Code are attracted, as there is no allegation of fraudulent or dishonest inducement against the petitioners or any other accused persons right from the beginning of the contract pursuant to which the Company was deceived. In order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. There is nothing in the complaint to show that the accused persons had fraudulent or dishonest intention at the time of making the promise. A pure and simple failure to keep up promise subsequently cannot be termed to be an act leading to cheating. There is also no allegation of dishonest misappropriation of property. The act of non-refund of the loan amount, at best, would give rise to a money claim for which a civil suit may lie before the civil court. Apparently, the instant complaint has been filed by the complainant by giving the cloak of a criminal case to a matter which is essentially civil in nature in order to put pressure on the accused.

12. So far as the offence under Section 467 IPC is



concerned, I do not find any allegation in the complaint of forgery of a document or a valuable security and in absence of such allegation, it cannot be said that an offence punishable under Section 467 IPC is made out.

13. In view of the discussions made above, in the opinion of this Court, allowing the prosecution to continue any further would amount to an abuse of the process of the Court.

14. Accordingly, the impugned order dated 17.08.2017 passed in Complaint Case No.772 of 2017 and the entire criminal proceedings arising out of said complaint are, hereby, set aside.

15. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.08.2018
Transmission Date	08.08.2018

