**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.17600 of 2018**

Arising Out of PS.Case No. -849 Year- 2017 Thana -MADHEPURA District- MADHEPURA

======================================================

1. Dr. Binod Kumar, Son of Late Jugeshwar Sharma, Resident of Flate No. 12, Himadri Apartment, West Boring Canal Road, Patna, P.S.-Krishnapuri, Dist.-Patna.

2. Kumaresh Prasad Singh, Son of Late Sripali Sharan Prasad Singh, Resident of at & P.O.-Morabadi, behind R.K. Mission, P.S.- Bariatu, District- Ranchi.

3. Harkesh Narayan Singh @ Harendra Prasad Singh, Son of Late Mandeep Singh, Resident of Village- Balua, P.O.- Balua, P.S.- Brahmpur, District- Buxar.

.... .... Petitioners

Versus

1. The State of Bihar.

2. Alok Kumar, Son of Late Yadunandan Singh, Resident of Ward No. 14, Madhepura, P.S.- Madhepura, District- Madhepura (Bihar).

.... .... Opposite Parties

======================================================

**Appearance :**

| | | |
|---|---|---|
| For the Petitioner/s | : | Mr. Raju Giri, Advocate<br>Mr. Santosh Kumar Giri, Advocate |
| For the State | : | Mr. Jharkhandi Upadhyay, APP |

======================================================

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 25-08-2018**

This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed by the petitioners for quashing the First Information Report (for short 'FIR') of Madhepura P.S. Case No.849 of 2017 instituted on 08.12.2017 for the offences punishable under Sections 119, 166, 379, 403, 409, 420, 477, 504 and 506 of the Indian Penal Code (for short ‘IPC’).

2. Mr. Raju Giri, learned advocate appearing for the petitioners submitted that petitioner no. 1, Dr. Binod Kumar, was appointed Vice Chancellor of B.N. Mandal University (for short ‘the University’) on 22.05.2014. He joined the University on 29.05.2014 and has already retired on 28.05.2017. The petitioner no.2 was Registrar of the University. His first tenure as Registrar was from 23.11.2007 to 31.08.2011 and again for the second time he became Registrar on 29.12.2013 and continued till 30.11.2017. He too has superannuated on 30.11.2017. The petitioner no.3 is the Finance Officer of the University. He joined the University as Finance Officer on 15.06.2015 and is still continuing. He contended that on perusal of the FIR, it would transpire that no criminal offence is attracted. The dispute, if any, is purely civil in nature. He pleaded that the dispute is of the year 2000 and the complaint was filed after substantial delay of about seventeen years, which also makes the entire complaint illegal. He argued that the allegations made in the FIR are absurd and inherently improbable. According to him, the criminal proceeding is manifestly attended with malafide and has been instituted with an ulterior motive for wreaking vengeance with a view to spite the accused persons due to private

and personal grudge.

3. *Per contra,* Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State submitted that the criminal case is under investigation and it would not be proper for this Court at the stage of investigation to embark upon an inquiry as to the probability, reliability or genuineness of the allegations made in the FIR. He pleaded that the courts role would begin only after the investigation is completed and police report under Section 173(2) of the CrPC is submitted in the court. He argued that since the allegations made in the FIR clearly constitute the offences of criminal breach of trust and cheating, there is no illegality in the action of the police either in institution of FIR or investigation of the same. He submitted that even though offences under some of the sections mentioned in the FIR may not be attracted, the same would be of no consequence, if any cognizable offence is made out. Under such circumstance, the police have a statutory duty to investigate the same.

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

5. The FIR has been instituted on 08.12.2017 on the basis of an order dated 28.08.2017 passed by the learned Chief Judicial Magistrate, Madhepura in exercise of his powers conferred

under Section 156(3) of the CrPC.

6. The prosecution case, in brief, according to the informant Alok Kumar is that he is a Government Contractor and carry out contract work in the University also. He was issued work order on 14.01.2000 by the then Vice Chancellor, Registrar and Finance Officer for construction of laboratory building of Botany and Zoology Department. The estimated cost of construction was Rs.3.60 lacs. He was paid 1.60 lacs as advance and had to complete the work within nine months. Another work order was also issued to him on 05.04.2000 for construction of visitors shade in the Ladies Hostel premises of which construction cost was Rs.36,360/- for which he was paid Rs.24,000/- in advance and had to complete the work within three months from the date of issuance of work order. It was agreed in between the parties that the work would be executed as per the specification and work quality would be maintained. The rest of the amount was to be paid on completion of work. He completed the work on time and the measurement of the work was also done by the then Junior Engineer. The said engineer after passing his bill and had sent the same to the concerned authority of the University. When rest of the payments were not made, he sent legal notice on 21.01.2002 to the accused persons on which the then Registrar replied that since matter has been sent to

the Vigilance Department, Government of Bihar for enquiry, the payments cannot be made. He received a notice dated 21.01.2008 through which he was directed to remain present as the work executed by him was to be looked into by the inquiry team. Even though the inquiry team found the work executed by him to be proper, payment of the rest amount was not remitted to him.

7. The informant has further alleged that payment in case of a similarly placed contractor, namely, Jai Prakash Ojha for the contract work executed by him has already been made but on one pretext or the other he is not being paid his due amount.

8. He has also alleged that building materials worth Rs.44,500/- belonging to him were lying in the University compound, but he was not allowed to remove the same on the ground that inquiry was going on. On 19.08.2015, on receipt of information that his building materials lying in the University compound were being removed, he rushed at the place and resisted the removal but no one heard him and materials were removed and he was also threatened.

9. On the basis of allegations made above, the FIR in question was registered and investigation was taken up.

10. Apparently, the claim of the informant relate to non-payment of overdue amount against two work contracts offered

to him by the University in the year 2000. The works were also completed in the year 2000 itself. Since then, the informant is representing to the authorities of the University for the payment of unpaid amount, but the same has been denied firstly, on the ground of some ongoing inquiry and subsequently on some other pretext.

11. It is also an admitted fact that for the works in question, the informant was also paid certain amount in advance.

12. There is no allegation in the FIR that the accused persons induced the informant fraudulently or dishonestly to deliver any property to any person.

13. There is also no allegation of culpable intent against the petitioners or any other accused right at the beginning. Merely because the University failed to pay the alleged overdue amount to the informant, it cannot be said that the accused persons committed the offence of cheating.

14. It is well settled position in law that mere breach of contract can not give rise to criminal prosecution. In **Hriday Ranjan Prasad Verma and Ors. vs. State of Bihar and Another [(2000) 4 SCC 168]**, the Supreme Court held as under:-

> "In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the

> time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed".

15. In **Murari Lal Gupta v. Gopi Singh [(2006) 2 SCC (Cri) 430]**, the Supreme Court quashed the complaint of criminal proceeding instituted under Sections 406 and 420 of the IPC on the following analysis:-

> "The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property of the respondent. Merely

because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. …"

16. In **S.W. Palanitkar and Ors. v. State of Bihar and Anr. [(2012) 1 SCC 241]**, it has been held 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.

17. As far as the offence of criminal breach of trust is concerned, it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It also to be alleged that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract by the accused himself or by someone else, which he is willingly suffer to do.

18. There is no allegation in the FIR that the

accused persons were entrusted with any property. The allegation of removal of building material from the premises of the University after 15 years of execution of contract work seems to be highly improbable and unbelievable. Moreover, no specific allegation against any one has been made in the FIR in this regard.

19. Since the learned Additional Public Prosecutor for the State has admitted that apart from the offences criminal breach of trust and cheating, no other offence is made out, I am not discussing in detail as with regard to other offences for which also the FIR has been instituted. Suffice to say, looking at the allegations made in the FIR, none of the ingredients of those offences are attracted in the case in hand.

20. The power to quash a criminal proceeding where the FIR prima facie makes out no offence has been considered by the Supreme Court in several cases. The Supreme Court has observed in number of cases that if the allegations made in the FIR taken at their face value and accepted in their entirety do not constitute an offence, the criminal proceedings instituted on the basis of such an FIR should be quashed.

21. In **R.P. Kapur v. State of Punjab [AIR 1960 SC 866]**, the Supreme Court formulated following categories of cases where inherent jurisdiction could and should be exercised to

quash proceeding:-

> "(i) Where there was a legal bar against the institution or continuance of the proceedings.
>
> (ii) Where the allegations in the first information report or complaint did not make out the offence alleged; and
>
> (iii) Where either there was no legal evidence adduced in support of the charge or the evidence adduced clearly or manifestly failed to prove the charge".

22. In **R. Kalyani vs. Janak C. Mehta and Ors. [(2009) 1 SCC 516]**, the Supreme Court culled out the following propositions of law for quashing a criminal proceedings:-

> "(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.
>
> (2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

> (3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any *mens rea* or *actus reus*.
>
> (4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue".

23. In **State of Haryana vs. Bhajan Lal & Ors. [1992 Supp. (1) SCC 335]** having surveyed the principle of law enunciated by the Supreme Court in large number of decisions relating to extraordinary jurisdiction under Article 226 of the Constitution of India and inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice:-

> "(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
>
> (2) where the allegations in the First Information

Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act,

providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge".

24. In view of the ratio laid down by the Supreme Court in the decisions noted above, it can safely be said that when FIR contains allegations which make out a cognizable offence, then quashing of FIR in exercise of its inherent power under Section 482 of the CrPC would not be justified. However, the Court should not hesitate in quashing a criminal proceeding where the allegations made in the FIR *ex facie* makes no offence.

25. Keeping the above proposition of law in mind, when I look to the allegations made in the FIR, as contained in Annexure-1 to this petition, I find that the allegations made therein do not attract any cognizable offence. The allegations made in the FIR are in the nature of money claim for which cause of action had arisen in the year 2000 itself. The informant ought to have resorted to civil remedy for recovery of money by way of filing a suit in the court of competent jurisdiction. That having not been done, the

belated institution of the present FIR against the office bearers of the University, who were not even attached with the affairs of the University at the relevant time, is certainly an action taken by the informant in desperation with ulterior motive.

26. In my considered opinion, the criminal case has been instituted by the informant with a mala fide intention in order to put pressure upon the authorities of the University for realization of the claimed amount.

27. The Supreme Court has deprecated the tendency to convert purely civil dispute into a criminal case and the court entertaining such matters for adjudication.

28. Expressing serious concern over a practice of conversion of civil cases into the criminal case, the Supreme Court in **Rajesh Bajaj vs. State NCT of Delhi and Ors. [(1999) 3 SCC 259]** observed: *"This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families"*. The Bench further observed: *"There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a*

*likelihood of imminent settlement. Any effort to settle civil disputes and claims, who do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged".*

29. In **M/s. Indian Oil Corporation v. NEPC India Ltd. & Ors. [(2006) 6 SCC 736]**, the Supreme Court has taken note of a growing tendency in business circles to convert purely civil disputes into criminal case.

30. In **Binod Kumar vs. State of Bihar [(2014) 10 SCC 663]**, the Supreme Court reiterated the principle of law that criminal proceedings are not a shortcut for other remedies. After holding that no case of cheating is made out, the court quashed the FIRs.

31. In view of my aforesaid analysis, allowing the investigation to continue any more would only be an exercise in futility.

32. Resultantly, the FIR of Madhepura P.S. Case No.849 of 2017 as well as the entire investigation conducted in the said case is quashed.

33. The application stands allowed.

34. Let a copy of the order be communicated to the Chief Judicial Magistrate, Madhepura.

**(Ashwani Kumar Singh, J.)**

Sanjeet/-

| | |
|---|---|
| AFR/NAFR | NAFR |
| CAV DATE | NA |
| Uploading Date | 01.09.2018 |
| Transmission Date | 01.09.2018 |