

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6053 of 2013

Arising out of

Criminal Revision No. 1935 of 2009

Arising Out of Complaint Case No.-2776 C Year-2006 Thana- PATNA COMPLAINT CASE
District- Patna

Binod Kumar, Son of Late Tulsi Prasad Singh, Director Magadh Coloniser Pvt. Ltd. Resident of Ashray Pawan Apartment Near Raja Bazar, P.S. - Shastri Nagar, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sachidanand Prasad, Son of Tarkeshwar Prasad, Rajendra Nagar, Ward No. 12, Gopalganj, Town + P.S. + District - Gopalganj.

... .. Opposite Party/s

with

Criminal Miscellaneous No. 6054 of 2013

Arising out of

Criminal Revision No. 1569 of 2009

Arising Out of Complaint Case No.-2776 C Year-2006 Thana- PATNA COMPLAINT CASE
District- Patna

Ranjana Das, Wife of Late Prakash Chandra Das, Resident of C/o K.M. Das (maternal Uncle) Jhanjharpur, P.S. - Jhanjharpur District - Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sachidanand Prasad Son of Sri Tarkeshwar Prasad, Rajendra Nagar, Ward No. 12, Gopalganj, Town + P.S. + District - Gopalganj.

... .. Opposite Party/s

Appearance :

(In Criminal Miscellaneous No. 6053 of 2013)

For the Petitioner/s : Mr. Jagannath Singh, Advocate

For the State : Mr. Atul Chandra, A.P.P.

(In Criminal Miscellaneous No. 6054 of 2013)

For the Petitioner/s : Mr. Jagannath Singh, Advocate

For the State : Mr. Jharkhandi Upadhyay, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 11-01-2019



Heard learned counsel for the petitioners and learned A.P.P. for the State.

2. The petitioner in Cr. Misc. No. 6053 of 2013 has moved the Court for the following relief:

“That this criminal Miscellaneous application is for quashing the order dated 13.11.2009 passed by Sr. Dasrath Mishra, learned Judicial Magistrate, 1st Class, Patna in Complaint case no. 2776 (C)/2006 rejecting the petition dated 7.10.2009 filed for discharge of the petitioner.”

3. The petitioner in Cr. Misc. No. 6054 of 2013 has moved the Court for the following relief:

“That this criminal Miscellaneous application is for quashing the order dated 5.9.2009 passed by Sr. Dasrath Mishra, learned Judicial Magistrate, 1st Class, Patna in Complaint case no. 2776 (C)/2006 rejecting the petition dated 11.08.2009 filed for discharge of the petitioner.”

4. Despite service of notice, nobody appeared on behalf of the Opposite Party No. 2, when the case was taken up and heard.

5. The allegation against the petitioners is that they being Directors of Magadh Coloniser Private Limited, which is a Company had neither given the flat booked in the name of the wife of the complainant nor returned the entire amount.

6. Learned counsel for the petitioners submitted that firstly, the complaint itself was not maintainable in the absence of



the Company being made accused as has been held by the Hon'ble Supreme Court in the case of **R. Kalyani v. Janak C. Mehta & Ors.** reported as **2008 (7) Supreme 794**, the relevant being at paragraph 27. It was submitted that even as per the complaint, the Opposite Party No. 2 had paid the amount to the husband of the petitioner in Cr. Misc. No. 6054 of 2013, and, thus, no payment being taken by the petitioners, the allegation against them is malicious. Learned counsel submitted that the Company in question, upon the death of the husband of the petitioner of Cr. Misc. No. 6054 of 2013, had inducted the petitioners as Directors. It was further submitted that thereafter, there was an agreement between the Company and the owners of the land and others by which all the assets and liabilities of the Company were taken over by them and in the Annexure-1 of the said agreement dated 11.08.2003, by which the original development agreement dated 14.01.1998, by which the land owners had entered into an agreement with Magadh Coloniser Private Limited was cancelled, shows that the wife of the opposite party no. 2 had booked the flat at a total cost of Rs. 3,25,000/- and, thus, from that time onwards, the liability rested with the owners to make good whatever loss may have been suffered by the complainant and not the petitioners. Learned counsel submitted that even otherwise, the issue basically



boils down to money dispute, which is of civil nature and criminal proceedings are an abuse of the process of the Court as the remedy lies before the Civil Court of competent jurisdiction. In this connection, learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of **Anand Kumar Mohatta vs. State (Govt. of NCT of Delhi)** reported as **2019 (1) PLJR (SC) 215** ; **M/s Indian Oil Corporation v. M/s NEPC India Ltd. & Ors.** reported as **(2006) 6 Supreme 66**, the relevant being at paragraphs no. 9 and 10 as also in the case of **Inder Mohan Goswami v. State of Uttaranchal** reported as **2008(1) PLJR (SC) 82**, the relevant being at paragraphs no. 23, 24, 27 and 45. Learned counsel submitted that the proposition in the aforesaid judgments is that the Court can exercise of its inherent power under Section 482 of the Code to prevent the abuse of the process of the Court and otherwise to secure the ends of justice and in the present case clearly the prosecution is both *mala fide* and abuse of the process of the Court.

7. Learned A.P.P. submitted that there is no infirmity in the order passed by the Court below for the reason that on the basis of the averments made in the complaint and after inquiry under Section 202 of the Code, by recording the statement of witnesses, the Court has come to a *prima facie* conclusion that the



offences under the Sections under which cognizance has been taken are made out. It was submitted that, thus, the same having been done, at the very preliminary stage, the petitioners are not entitled to be discharged as full-fledged trial is required and only upon the same, if the petitioners are able to show their innocence, they shall be acquitted. It was submitted that it is not the stage where the Court is required to exercise its inherent power under Section 482 of the Code and put an end to the criminal proceeding at the very initial stage.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. Coming to the allegations on facts, the complainant being a private citizen had paid money to the Company for booking a flat, which was done and out of the total amount agreed, a substantial amount was paid. Thus, a common man investing his hard earned money in the Company which undertook to provide a flat to the complainant, a solemn obligation was cast upon the Company to deliver such flat after taking the remaining amount. Thus, non fulfillment of the commitment on behalf of the Company cannot be said to be a purely civil dispute for the reason that as has been alleged in the complaint, the complainant once approaching the developer, was



asked to now make payment, as per the escalated value, which allegation is clearly natural, plausible and acceptable and it cannot be said, at this stage to be an exaggeration. It is a common practice that if the projects get delayed, the price of land and property escalates and then the owners/ developers try to extract more money from the intending buyers and because the intending buyers have already given huge amount to such owners/builders, they are caught and stuck with such investment and are not in any bargaining position. Thus, even by return of the money, it is ultimately such buyers who suffer, because the money returned to them is what they had put in many years ago and in actual terms, the said money loses its value on the one hand and on the other hand, they would not be able to get any property/ flat at the same rate after so many years elsewhere. This itself, in the opinion of the Court, is a fraud played by such owners/builders to cheat and cause undue loss and harassment to citizens, who have invested their hard earned money in such projects in the hope that the owner/builder would fulfill their commitment and deliver the property to them. Further, with regard to the objections raised by learned counsel for the petitioners that the Company has not been made a party, in the present case, it is clear that the petitioners have been made accused describing them as Directors of the



Company. Thus, the fact that the petitioners' Company has not been named first through the Directors, who are the petitioners, is only hyper-technical and would not in any way prove fatal for the prosecution. The other contention of learned counsel for the petitioners that the same is a purely civil dispute is also not acceptable for the reason that the averments made in the complaint and the facts as stated by the inquiry witnesses, do disclose offences which are punishable on the criminal side. The Hon'ble Supreme Court in a catena of decisions has held that there may be instances where there can be both civil and criminal liability arising out of the same transaction and in such cases, the Court ought not to interfere in the criminal proceeding at the initial stage, which should be allowed to be taken to their logical conclusion.

9. In the connection, the Court deems it relevant to refer to the decision of the Hon'ble Supreme Court in the case of **Indian Oil Corporation v. NEPC India Limited** reported as **2006 (6) SCC 736**, where at paragraph no. 12 the principles relating to exercise of jurisdiction under Section 482 of the Code have been enumerated which is quoted hereinbelow:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several



decisions. To mention a few- Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana vs. Bhajanlal, Rupam Deol Bajaj vs. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar vs. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan vs Vijay Kumar, and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c)



a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

10. From the aforesaid it is clear that a given set of facts may make out a civil wrong as also a criminal offence. Mere fact that the complaint relates to a commercial transaction or breach of contract for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegation in the complaint disclose a criminal offence or not. In the present case, the Court finds that criminal offence is disclosed in the complaint.

11. Further, in the case of **Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd.** reported as **(2008) 13 SCC 678**, the Hon’ble Supreme Court at paragraph no. 22 has held as under:

“22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the



criminal proceedings would amount to an abuse of the process of Court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal namely to force the accused to pay the amount due to the complainant immediately. The Courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The Courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.”

12. In the present case, in view of the discussions made hereinabove, the Court finds that the complainant not only has a case on the civil side with regard to either recovery of his money or delivery of the flat, but equally on the criminal side also, as the Company having represented to the complainant that for a certain amount, a flat would be given to him and the same neither having been done nor money returned, which was required to be done along with interest to compensate for the long period for which the money was kept with the Company, notwithstanding that subsequently, the Company got into an agreement with the land owners, the liability to ensure that either the flat is given to the complainant or adequate amount returned, such provision was required to be incorporated in the subsequent agreement between the Company and the land owners, which not having been done



itself indicates that the Company had left the complainant in the lurch and at the mercy of the land owners with whom the Company subsequently made an agreement dated 11.08.2003.

13. For the reasons aforesaid, the application stands dismissed.

14. The lower Court records be returned to the Court below forthwith.

(Ahsanuddin Amanullah, J.)

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