

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61855 of 2018

Arising Out of PS. Case No.-438 Year-2016 Thana- ARA NAWADA District- Bhojpur

Pradeep Jaisawal @ Pradeep Kumar Jaisawal Son of Late Jagdish Prasad,
Resident of Station Road, Dumraon, P.S. Dumraon, District- Buxar.

... .. Petitioner

Versus

1. State Of Bihar
2. Binod Kumar Pandey, Son of Sri Gangeshwar Pandey, Resident of Amirchand Kothi, Pakari Road, Ara, District- Bhojpur.

... .. Opposite Parties

Appearance :

For the Petitioner : Mr. Chandra Bhushan Das, Adv.

For Opposite Party No.2 : Mr. Awadh Bihari Ojha, Sr. Adv.

Mr. Nitesh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 07-08-2019

Heard Mr. Chandra Bhushan Das, learned counsel for the petitioner and Mr. A. B. Ojha, learned senior advocate for the opposite party no.2. Despite valid service of notice, no one appears on behalf of the State of Bihar.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioner for quashing the order dated 24.05.2018 passed by the learned Chief Judicial Magistrate, Ara in Ara Nawada P.S. Case No. 438 of 2016 by which he has taken cognizance of the offences under Sections 341, 323, 504, 506, 420, 467, 468, 471 and 120-B read with 34 of the Indian Penal Code (for short 'IPC').



3. It is submitted by Mr. Chandra Bhushan Das, learned advocate for the petitioner that from the averments made in the written report submitted by the informant-opposite party no.2, even if the entire allegations are believed to be true at their face value, no cognizable offence is made out. He submitted that the Officer-in-Charge of Ara Nawada Police Station has illegally instituted first information report (for short 'FIR') against the petitioner and others and took up investigation little realizing that the allegations made in the written report would not attract the ingredients of the offences alleged. He contended that allowing the prosecution to continue would amount to an abuse of the process of the court.

4. Per contra, Mr. A.B. Ojha, learned senior advocate appearing on behalf of the opposite party no.2 submitted that the petitioner has filed the instant case for quashing the order of cognizance. The allegations made in the FIR would certainly attract the ingredients of a cognizable offence. To hold investigation into a cognizable offence is the statutory right of the police. Accordingly, no error can be found with the action of the police whereby they registered the FIR and took up investigation. In course of investigation, the allegations made in the FIR were found true. Hence, a report under Section 173(2) of the Cr.P.C was



submitted against the petitioner. Learned Chief Judicial Magistrate took cognizance of the offence after appreciating the materials available on record. According to him, no interference is warranted with the order impugned.

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

6. The FIR has been instituted on the basis of a written report submitted by the complainant-opposite party no.2 on 26.06.2016 to the Officer-in-charge of Nawada Police Station, Bhojpur in respect of an occurrence of an offence which took place between 27.08.2008 and 02.09.2013. The case of the informant, in brief, is that he had negotiated with the members of the managing committee of the Church at Ara for the sale of 18 kathas of land pertaining to the Church. The members of the committee convened a meeting on 02.09.2013. In the meeting, it was resolved that the earlier committee, on 27.08.2018, had taken a decision to sell 18 kathas of land to the petitioner Pradeep Jaiswal against consideration money to the tune of Rs.9,50,000/-, but since the petitioner failed to get the aforesaid plot of land transferred in his name and in the meanwhile between 2008 and 2013 as the price of the aforesaid land escalated, the committee decided to sell the land to the informant against consideration amount of Rs. 50,00,000/-.



In view of the decision taken by the committee, the informant managed Rs.50,00,000/- and requested the members of the committee to receive the amount and execute the sale deed of 18 kathas land in his favour, but the members of the committee, in conspiracy with each other, even without informing the informant, transferred the land in favour of the petitioner on 06.04.2016 after taking consideration amount of Rs.50,00,000/-.

7. The informant has further stated in his written report that when he came to know about the aforesaid transfer of 18 kathas of land in favour of the petitioner, he obtained copies of the documents and, thereafter, visited the office of the Church situated at Chandwa on 15.06.2016 at about 1.00 p.m. and inquired from the persons present in the office of the Church, but they abused, assaulted and drove him away.

8. It would be relevant to note here that as per the FIR, the informant visited the office of the Church situated at Chandwa on 15.06.2016 at 1.00 p.m. However, the story of abuse, assault, etc. appears to be ornamental, as no report in this regard was given to the police immediately after the occurrence. After 11 days of the alleged occurrence, it appears that the informant visited the police station on 26.06.2016 and submitted his written report at 9.45 a.m..



There is no explanation for the inordinate and unexplained delay caused in filing the FIR.

9. As far as the main offenses under Sections 420 and 406 of the IPC are concerned, learned counsel appearing for the petitioner appears to be right in his submission that even if the entire allegations made in the FIR are accepted at their face value, none of the ingredients of the offences would be attracted.

10. Section 406 of the IPC prescribes punishment for the criminal breach of trust. The offence of criminal breach of trust is defined under Section 405 of the IPC.

11. Section 405 of the IPC provides that 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”

12. As seen above, one of the essential ingredients in order to constitute an offence of criminal breach of trust is entrusting a person with property or with any dominion over the



property and that the person entrusted dishonestly misappropriated or converted that property to his own use.

13. In the instant case, admittedly, the informant had not entrusted any property to the petitioner or any other accused persons. His entire allegation is based on the fact that the managing committee of the Church had resolved to transfer 18 kathas of land to the informant against consideration money of Rs.50,00,000/-, but when the informant managed the amount and requested the office bearers of the managing committee of the Church to execute the sale deed, they did not transfer the land in his favour and under the criminal conspiracy transferred the land in favour of the petitioner after taking Rs.50,00,000/- from him.

14. By no stretch of imagination, it can be said that the ingredients of the offence punishable under Section 406 of the IPC are attracted under the facts and circumstances of the case.

15. Similarly, Section 420 of the IPC provides punishment for the offence of cheating and dishonestly inducing delivery of property.

16. The offence of cheating is defined under Section 415 of the IPC. It provides that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person



shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

17. To hold a person guilty of cheating as defined under Section 415 of the IPC, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. It further requires deception of any person inducing that person to deliver any property to any person or that any person shall retain any property by intentionally inducing that person to do or omit to do anything.

18. Here, in the present case, there is no allegation that due to inducement made by the accused persons the informant delivered any property to any person. His allegation is that though he was ready to pay the agreed amount for transfer of the land, the accused persons did not transfer the land in his favour and under conspiracy they transferred the land in favour of the petitioner. The allegation made in the FIR would certainly not attract the ingredients of the offence of cheating.



19. In absence of the essential ingredients of the offence of cheating, a person cannot be prosecuted for the offence punishable under Section 420 of the IPC.

20. Having regard to the facts and circumstances of the case, in the opinion of this Court, the learned Chief Judicial Magistrate, Ara was not justified in taking cognizance of the offences in the case in hand. The order taking cognizance shows complete lack of application of judicial mind.

21. In the opinion of this Court, if the allegations made in the FIR do not attract the ingredients of the offences alleged, there would be no justification in proceeding ahead with the prosecution of the accused persons.

22. Accordingly, the impugned order dated 24.05.2018 passed by the learned Chief Judicial Magistrate, Ara in Ara Nawada P.S. Case No. 438 of 2016 is quashed.

23. The writ petition stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13.08.2019
Transmission Date	13.08.2019

