

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.28659 of 2017**

Arising Out of PS. Case No.-96 Year-2013 Thana- AMAS District- Gaya

PURSHOTTAM TULSYAN @ PURSHOTTAM Son of Shri Sita Ram  
Tulsyam, resident of M- 64, GK-II, P.S. Greater Kailash-I, Distt.- New Delhi.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Sri Krishna Murari Prasad, Son of late Bishwanath Prasad, resident of Darbar House, Sherghati, P.O. and Police Station- Sherghati, District- Gaya.

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr.Sanjeev Ranjan, adv.

For the Opposite Party/s : Mr.Satyadev Prasad Singh Yadav, APP

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**ORAL ORDER**

4      25-04-2019                      Heard learned counsel for the petitioner as well as learned  
APP along with learned O.P. No.2.

2.      Learned counsel for the petitioner has submitted that from the deed of agreement dated 08.08.2009 which happens to be part and parcel of the written report, it is evident that whatever allegation has been attributed in the written report could not draw the criminal prosecution nor the civil suit till existence of the agreement in pursuance of the deed of agreement. To substantiate such plea, referred para-6 of the agreement and said that none of the parties have been authorized to ask for revocation, cancellation, termination of the agreement which has been made effective for five years and so, even on the date institution of the case i.e. 25.07.2013 the agreement was in operation and that being so, the instant FIR



followed with the order of cognizance dated 23.04.2016 passed in connection with Amas P.S. Case No.96/2013 by sri Gorakh Nath Dubey, J.M., Ist Class, Sherghati, Gaya summoning the petitioner to face trial for an offence punishable under Sections 420, 406, 120B, 504, 506 of the IPC is fit to be set aside.

3. The learned counsel for the O.P. No.2 has submitted that the criminal case has been instituted not for the property falling under the deed of agreement nor with regard to due rent rather this case has been instituted on account of dubious activity of the petitioner who, with a criminal intention indulged in a transportation of the stone moram belonging to the O.P. No.2 which the O.P. No.2 had under the license to a tune of Rs.13,90,000/-. That being so, instant criminal prosecution is sustainable and in likewise manner, the order of cognizance. So submitted that the order impugned is fit to be confirmed.

4. The learned APP endorsed the view.

5. O.P. No.2 had filed written report on 25.07.2013 putting an allegation that there was an agreement in between the parties on 08.08.2009 effective for five years regarding the land bearing C.S. Khata No.24, C.S. Plot No.165, Area 8 acre for a period of five years at yearly rental of Rs.14,000/- per acre, wherein automatic stone crusher was installed by the petitioner/accused. It has further been disclosed that in order to run the aforesaid crusher plant, , 1390 trip stone mix material has been taken away by the



petitioner/accused costing Rs.13,90,000/- (1000/- per trip) and the said amount till today has not been paid. It has further been disclosed that after sometime when the payment was not made then, he approached the accused who assured him that at the time of relinquishing he will give him the old pokhar machine JCB, loader against the due amount along with interest, because of the fact that these machines are being required by him. He accepted the offer. He (accused) had further assured that all the relevant documents is going to be seen so that transfer be properly made. When the accused did not rest and whereupon he made demand and during course thereof, the other accused who happens to be employee of the Purushottam Tulsyan namely, Niranjana Singh, Mukesh Kumar Singh, Prince Kumar along with 15-20 staff quarreled. They have also indulged in push and pull and threatened to kill. They have also said that what kind of money, for what he is demanding. It has also been disclosed that the rent for the 2013-14 appertaining to Rs.1,20,000/- has also become due. Then thereafter, running therefrom, filed the written report. The written report happens to be annexed with the different annexures including the agreement in question.

6. From the written report itself, it is evident that two kinds of event are there. The first one is with regard to possession over the land which was under the terms of agreement dated 08.08.2009 and was effective for five years without having any space for regarding revocation, cancellation and termination. For better



appreciation clause-6 of the agreement is quoted below:

“6. That this agreement shall remain in force for the fixed period of five years without any revocation, cancellation or termination by either party. It is distinctly agreed between the parties that during this period of Five years, first party will not lease out, transfer or mortgage the schedule-A land to any other person or firms. (After expiry of Five years the second party if so desire may continue with consent of the First party for another five years subject to payment of enhanced rent @ 10% (Ten Percent) ” over and above the existing rate of rent.)

7. Apart from this, clause 10 of the aforesaid agreement looks pertinent to incorporate which reads as follows:

“10. That in the event of any dispute and difference arising between the first party and Second Party the same shall be resolved by arbitration as per provisions of Arbitration and Conciliation Act 1956.”

From clause-10, it is evident that it is not confined on any particular issue rather it simply suggests that any kind of dispute amongst the parties is subject to arbitration. That being so, in terms of agreement which has awning to the issue also as it appears on plain reading, paved way to the parties to take recourse by way of arbitration.

8. Apart from this, from the written report itself there happens to be specific disclosure that after sometime when the



complainant had gone to ask for money from Purushottam Tulsyan, the aforesaid Purushottam disclosed that at the time of departure, which is not specified the items as disclosed will be transferred to him then, as per terms of agreement it was to expire on 07.08.2014 and in the aforesaid background, filing of instant case on 25.07.2013 certainly happens to be within the period of agreement and that being so, taking into cumulative effect did not justify the prosecution.

**9. In Satishchandra Ratanlal Shah v. State of Gujarat & Anr.** reported in **AIR 2019 SC 1538**, it has been held:

“14. Now coming to the charge under **Section 415 punishable under Section 420 of IPC**. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See [Hridaya Ranjan Prasad Verma v. State of Bihar](#), (2000) 4 SCC 168). In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached the respondent no. 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, the respondent no. 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

15. Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations [refer to [Gian Singh v. State of Punjab](#), (2012) 10 SCC 303]. The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 of IPC.”



**10.** The contention of the O.P. No.2 that there happens to be malafide intention at the end of the petitioner, should have properly been exposed that right from negotiation, inception of agreement the petitioner/accused was carrying deceptive, fraudulent in order to intention to misappropriate the money which is lacking. In any view of the matter, the order impugned did not justify. Consequent thereupon, is set aside to the extent of separation. Petition is allowed.

**11.** Lastly, the office is directed to place the order impugned before the Hon'ble Inspecting Judge in order to came across the activity of the lower court who, like Executive Magistrate got format printed, and then filled up the gaps. After all, order of cognizance is judicial function, and the order relating thereto, must depict such exercise.

**(Aditya Kumar Trivedi, J.)**

Prakash Narayan

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