

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20383 of 2015

Arising Out of PS. Case No.-112 Year-2014 Thana- ARA NAGAR District- Bhojpur

=====

Tribeni Prasad Singh @ Tribeni Singh S/o Sri Kesho Singh, R/o Mohalla - K.
G. Road, Arrah, P.S. - Arrah Nawada, District - Bhojpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s :	Mr.Bipin Kumar, Advocate
For the Opposite Party/s :	Mr. Shyam Kumar Singh, APP
For Opposite Party No.2:	Mr. Gopal Govind Mishra, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date : 19-07-2019

Heard learned counsel for the petitioner, learned
Additional Public Prosecutor for the State and learned counsel
for Opposite Party No.2.

2. Opposite Party No.2 Krishna Giri brought
Complaint Case No.480(C) of 2014 before the learned Chief
Judicial Magistrate, Bhojpur at Ara, against the petitioner for
the offences under Sections 406/418/420/504 of the Indian
Penal Code.

3. Prayer in the unaffidavitted complaint petition
was for taking of cognizance and for punishing the accused after
trial. The learned Magistrate sent the complaint petition for
registration of a police case in exercise of power under Section
156(3) Cr.P.C. Thereafter, Ara Town P.S. Case No.112 of 2014



was registered for the offences under Sections 406/418/420/504 of the Indian Penal Code. After investigation, the police did not send up the petitioner for trial. However, the learned Magistrate disagreed with the police report and took cognizance for the offences under Sections 406/418/420/504 of the Indian Penal Code by the impugned order dated 03.12.2014.

4. According to complaint petition, the complainant is engaged in business of construction of the house whereas the petitioner is a contractor doing building construction work of government buildings in different departments of the government. On 28.06.2013, the petitioner and complainant agreed wherein complainant was assigned construction work along with supply of necessary accessories used for construction whereas the raw material was to be supplied by the petitioner. The complainant performed the work of Rs.606,856/-. However, the petitioner could pay only Rs.4,25,008/-. The complainant demanded the remaining dues but the petitioner did not pay the same; rather did not allow to take away the accessories used for construction of the building.

5. Learned counsel for the petitioner submits that this is a case of pure civil dispute. During investigation it came that money of the repetition was due with the complainant. The



matter is simply of the accounting between the parties and redressal of the grievance of any party is in the civil side. From the conduct of the petitioner in making payment of major part of the claimed amount shows that the petitioner had no dishonest or fraudulent intention at any point of time from inception of the agreement between the parties till the completion of performance of contract.

6. Learned counsel for Opposite Party No.2 submits that at the stage of cognizance, the Magistrate is required to see prima facie case for issuance of process. Roving inquiry into correctness and truthfulness of the allegation is not permissible at this stage. Hence, the impugned order requires no interference.

7. Learned counsel next submits that civil remedy is no bar for criminal prosecution if the ingredients of offences are disclosed in the complaint petition and the material collected during investigation. Reliance has been placed on the judgment of Hon'ble Supreme Court in **Jagdish Ram Vs. The State of Rajasthan and Another** reported in **AIR 2004 SC 1734** and in the case of **Sajan Kumar Dalmia Vs. The State of Bihar and Another** reported in **2005(3) PLJR (HC) 441**.

8. There is no dispute regarding proposition of law



settled in the aforesaid cases that at the stage of cognizance the Magistrate has to see whether prima facie offence is disclosed in the allegation and material collected during inquiry/investigation. The Magistrate cannot, at this stage, enter into meticulous appreciation of evidence to find out the trustworthiness of the allegation and evidence produced by the complainant. However, it is equally well settled that once the Magistrate decides to disagree with the police report it has to discuss the material which led it to disagreement with the police report. The matter would have been different if any protest petition would have been there. In this case simply the Magistrate has disagreed with the police report not sending up the petitioner for trial for lack of evidence. The learned Magistrate has relied on paragraph Nos.5,7,8,9, 10, 11 and 16 of the case-diary for making the cognizance order. In paragraph 5 there is further statement of the complainant, in paragraph 7 statement of the son of the informant has been recorded wherein he has supported the allegation disclosed in the FIR. Paragraph 8 contains statement of witness, paragraph 9 contains statement of witness Dudhan Puri. Paragraph 10 contains statement of witness Guddu Puri, Paragraph-16 is supervision note which cannot be treated as evidence. The witnesses have supported the



prosecution allegation.

9. Now the question is whether the bare perusal of the allegation makes out a case for which cognizance has been taken against the petitioner. There is no case or evidence of entrustment of any property by the complainant to the petitioner. Hence, offence of criminal misappropriation does not arise. Therefore, cognizance under Section 406 of the Indian Penal Code apparently not sustainable.

10. In **Md. Ibrahim Vs. The State of Bihar** reported in **(2009) 8 Supreme Court Cases 751**, the Hon'ble Supreme Court had occasion to examine the requirement of ingredients of an offence of cheating. In paragraph 18 of the judgment, the Hon'ble Supreme Court said that essential ingredients of cheating are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and



(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

11. Thus, ingredient to constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived to deliver any property to any person, or to make, alter or destroy wholly or in part a valuable security or anything signed or sealed and which is capable of being converted into valuable security.

12. This case is not covered under Item Nos.(ii) or (iii) above. So far item No.(i) is concerned, the complaint petition or evidence of witnesses does not disclose that the petitioner persuaded the complainant for agreement by making a false and misleading representation or dishonestly concealed anything material relating to nature of work. The complaint petition does not reveal that for performance of work what was agreed amount to be paid by the petitioner to the complainant. Only after performance of work the total cost was assessed and out of that a major portion was paid by the petitioner to the complainant. As such the conduct of the petitioner does not lead to infer that the petitioner was carrying a dishonest and



fraudulent intention.

13. Some of the witnesses stated before the police that the complainant did not performed the work within time which caused loss to the petitioner (contractor) either due to delay in performance of the work or escalation of price of the material.

14. Hence, in my view, also the matter appears to be of accounting and civil dispute purely and no ingredient of offences for which cognizance has been taken are prima facie made out against the petitioner. Hence, criminal prosecution amounts to an abuse of the process of the Court.

15. Accordingly, the impugned order and subsequent proceeding stands quashed and this application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.07.2019
Transmission Date	23.07.2019

