

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20527 of 2015

Arising Out of PS. Case No.-60 Year-2014 Thana- VAISALI COMPLAINT CASE District-
Vaishali

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1. Kundan Kumar S/O Jainath Chaudhary
 2. Krishn Mohan Chaudhary S/O Shiv Sahankar Chaudhary Both Resident of Village- Maida Tola, Lalganj, P.S.- Lalganj, District- Vaishali

... .. Petitioner/s

Versus

1. State Of Bihar
2. Manju Singh W/o Sri Ashok Singh, R/o Kanhaimal, Hajipur, P.S.- Town, Hajipur, District- Vaishali

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Satya Prakash Sinha, Adv
For the O.P.No.2	:	Mr.Ranjit Kumar Thakur, Adv
For the State	:	Mr.A.M.P.Mehta, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 23-08-2019

Heard learned counsel for the parties.

2. The petitioners are accused in Complaint Case No.60 of 2014, wherein cognizance has been taken against the petitioners for offence under Section 420 I.P.C. by the impugned order dated 27.01.2014.

3. The challenge is on the ground that on a bare perusal of the complaint petition, a case of only civil dispute is made out and no case of cheating is made out. Hence, the criminal prosecution is abuse of the process of the Court.

4. Learned counsel for opposite party No.2 submits that once cognizance has been taken by the learned court below, it



should not be interfered only on the ground that civil dispute is there between the parties when the ingredients of criminal offences are disclosed in the complaint petition.

5. According to complaint petition, the complainant had got 11katha 03 dhurs of Plot Nos.923 and 926 under Khata No.51 from the ex-landlord-Ram Nihora Singh through registered deed of lease dated 05.02.1948. Prior to that the lease was unregistered one effective from 31.01.1938. After vesting of Jamindari, name of the complainant was recorded in the Govt. records and complainant is paying the rent and getting the receipts. However, co-accused-Nand Lal Singh Son of Late Ram Nihora Singh, the ex-landlord and co-accused-Ashok Singh, son of Nand Lal Singh have executed different registered sale deeds in respect of the aforesaid property either in favour of the petitioners or in favour of some other co-accused just to cause wrongful loss to the complainant.

6. Learned counsel for the petitioners submits that even if the transaction and claim of the complainant is assumed to be correct, in fact, the petitioners, who are bonafide purchaser for consideration, have been cheated by Nand Lal Singh and his son and not the complainant. Moreover, civil suit is going on between the parties for redressal of grievance of the complainant whether



the property is of the complainant or of the petitioners. In the aforesaid circumstance, criminal prosecution is abuse of the process of the Court.

7. The requirement to prove charge under Section 420 I.P.C. was considered by the Hon'ble Supreme Court in the case of **Md. Ibrahim V. The State of Bihar** reported in **2009(4) PLJR SC 99**. The Hon'ble Apex Court in para-13 of the judgment examined the ingredients of offence of the cheating;

“13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence 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 actor omission causing or is likely to



cause damage or harm to that person in body, mind, reputation or property. 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: (i) to deliver any property to any person, or (ii) 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 a valuable security).”

8. In **Hridaya Ranjan Prasad Verma v. State of Bihar**, reported in **(2000)4 SCC 168**, the Apex Court observed in para-15 of the judgment as follows:

“15. 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 of 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.”

9. In the present case, there is no material to substantiate that petitioners had dishonest and fraudulent intention to cheat the complainant because no one can transfer a better title than he himself possesses nor anyone can get a title on the basis of transfer deed executed by a non-title holder. Therefore, in the circumstance, complainant has not been cheating in this case. Hence, criminal prosecution at the hands of the complainant is abuse of the process of the Court which cannot be allowed.



10. Accordingly, the impugned order and the entire criminal proceeding arising out of the impugned order is hereby quashed and this application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
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