

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 36 of 2018

Shailendra Nema, S/o. Purushottam Nema, Aged About 37 Years, R/o. Plot No. 14, Street No. C, Triveni Nagar (Smriti Nagar), Bhilai, District Durg (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh, Through : Secretary, Department Home, Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh).
2. Superintendent Of Police, District Durg (Chhattisgarh).
3. Town Inspector, Police Station- Supela, Bhilai, District Durg (Chhattisgarh).
4. Kishore Kumar Mishra, S/o. Late Tridas Kumar Mishra, Aged About 50 Years, R/o. B-84, Smriti Nagar, Market, Bhilai, District Durg (Chhattisgarh).

-----Respondents

For Petitioner	: Mr. T.K. Tiwari, Advocate
For Respondent/State	: Mr. Devendra Pratap Singh, Dy.A.G.
For Respondent No.4	: Mr. B.P. Singh, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

07/08/2019

Heard on admission.

1. The instant petition under Article 226 of Constitution of India has been filed for issuance of writ of mandamus commanding the respondent No.2 and 3 to register FIR against respondent No.4.

2. It is submitted by the counsel for the petitioner that respondent No.4 proposed for sale of his shop-cum-residence bearing No.B-84, situated at Smriti Nagar Market, Bhilai, District Durg for consideration of Rs.50.00 lakhs, regarding which an agreement dated 02.11.2016 (Annexure P-1) was executed between the parties and an advance amount of Rs.2,26,000/- was received by the respondent No.4 and Rs.4,50,000/- was received by the respondent No.4 in his account through RTGS. Thereafter some cash amount was also paid to the respondent No.4 on different dates. The respondent No.4 has not performed his part in the agreement and he is making attempt to sale out the said property to somebody else. Therefore, finding that respondent No.4 did not have intention to transfer the property from very beginning, a legal notice was served upon the respondent No.4 (Annexure P-4), which was not responded, thereafter a complaint has been filed (Annexure P-5), before the Special Crime Investigation Unit, Durg/Superintendent of Police, Durg. The respondent No.2 and 3 have not taken any action on the basis of the complaint so filed, therefore, this petition has been filed for issuance of direction in accordance with the guidelines laid down by the Supreme Court in case of ***Lalita Kumari Vs. Government of Uttar Pradesh & Ors.***, reported in **(2014) 2 SCC 1**.
3. Counsel for the State/respondents N.1 to 3 submits that the dispute between the petitioner and the respondent No.4 is of civil nature, therefore, the petitioner has option available to pursue the matter before the Civil Court. It is also submitted that actually the purpose of the petitioner is only to get refund of the amount advanced, which is also again a matter of civil nature.

4. Counsel for the respondent No.4 submits that direction of the Supreme Court in case of Lalita Kumari (supra) are not applicable in this case for the only reason that case is purely of civil nature. There was a stipulation in the agreement specifying the time in which the agreement was to be performed. The petitioner himself has failed making arrangement of the consideration amount and requesting the respondent No.4 for execution of sale deed and thereafter time has lapsed. After the lapse of time stipulated, respondent No.4 served a legal notice upon the petitioner cancelling the agreement dated 02.11.2016 on account of non-performance of the petitioner and proposing for refund of the amount received in advance. It is denied that respondent No. 4 is looking to sale out the property to somebody else. It is prayed that petition is not maintainable and it may be dismissed.
5. In reply, it is submitted by the counsel for the petitioner that it is a case in which mens-rea/criminal intent was present on the part of the respondent No.4 from very beginning, therefore, the respondent No.4 has not shown any intention to make refund of the amount received by him. Further according to the information received by the petitioner, some property has been sold out to third person, therefore, it is prayed that direction be issued.
6. I have heard the learned counsel for the parties and perused the documents placed on record.
7. On perusal of the agreement dated 02.11.2016, it is found that there is stipulation that sale deed shall be registered by the month of May, 2017. Time stipulated in the agreement can not override, the rights of the party to contract, if the rights exists under the contract and is

capable of pursuing under the provisions of Limitation Act.

8. Although there are direction issued by the Supreme Court in case of Lalita Kumari (Supra), but there is requirement that any complaint filed must disclose commission of cognizable offence. One of the direction of the Supreme Court in Paragraph 120(2) is that if the information received does not disclose the cognizable offence, but indicates the necessary enquiry, a preliminary enquiry may be conducted only in order to ascertain whether any cognizable offence is made out or not. The emphasis has to be given on the necessity for enquiry or a preliminary enquiry in this case. Clearly, it is a case where the dispute between the parties is with respect to the contract/agreement between them, which has not been performed by either of the parties. There are allegations made against each other that it was the respondent No.4, who has failed to perform, in return the respondent No.4, is alleging that it is the petitioner, who has failed to perform. The submission of the petitioner that there had been mens-rea/criminal intent present from the very beginning, when the contract was entered between the parties is without any substance. Clearly the notice dated 13.06.2017 (P-3), served upon the petitioner by respondent No.4 mentions that agreement has been canceled and the petitioner is at liberty to take refund of the amount advance by him. Remedy is available to the petitioner to bring a suit for specific performance of contract, before the Civil Court, therefore, it is purely a case of civil nature. No criminal intent is found on the part of the respondent No.4, hence, the directions in Lalita Kumar case (supra) are not applicable in this case.
9. Similarly, the other reliance of the petitioner in the case of ***Madhosingh & Ors. Vs. Kamla Devi & Ors.***, reported in **1992**

Criminal Law Journal 1858 is also not applicable in this case as the facts and circumstances are altogether different. Therefore, this petition is without any substance, which is dismissed accordingly at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram