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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 20.09.2019

Order Passed on : 21/10/2019

W.P.(Cr.) No. 424 of 2017

1. Vaibhav Jain, S/o. Shri Vimal Jain, aged about 35 years, Director of M/s. Ycon Developers Engineering Pvt. Ltd., 4th Floor Ravi Bhavan, Jai Estambh Chowk, Raipur (C.G.)
2. Varun Jain, S/o. Shri Vimal Jain, aged about 38 years, Director of M/s. Ycon Developers Engineering Pvt. Ltd., 4th Floor Ravi Bhavan, Jai Estambh Chowk, Raipur (C.G.)
3. Vimal Jain, S/o. Shri Maniklal Jain, aged about 55 years, Director of M/s. Ycon Developers Engineering Pvt. Ltd., 4th Floor Ravi Bhavan, Jai Estambh Chowk, Raipur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through : Its Secretary, Department of Home/Police, Mahanadi, Mantralaya, Police Station & Post – Rakhi, New Raipur, District – Raipur (C.G.)
2. Superintendent of Police, District – Raipur (C.G.)
3. Station House Officer, Police Station – Telibandha, Raipur, District – Raipur (C.G.)
4. Anil Nachrani, S/o. Late Shri M.P. Nachrani, R/o. Jal Vihar Colony, Telibandha, Raipur, District – Raipur (C.G.)

-----Respondents

For Petitioners	: Mr. Kishore Bhaduri, Advocate with Mr. Sunny Agrawal, Advocate
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For Respondents/State No.1 to 3	: Mr. Devendra Pratap Singh, Dy.A.G.
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For Respondent No.4	: Mr. Arvind Shrivastava, Advocate
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

21/10/2019.

1. This present petition has been brought praying for quashment of FIR No. (3334106617)316/2017, lodged against the petitioners at Police Station Telibandha, Raipur, District – Raipur (C.G.) for commission of offence under Section 420, 34 of the Indian Penal Code,
2. It is submitted by the learned counsel for the petitioners that totally false FIR has been lodged by the complainant in this case. The dispute is on the basis of the agreement dated 14.06.2016, in which the petitioners could not perform their part, therefore, it is a case of simple breach of contract, for which civil remedy is available. In-fact, the registered sale deed could not be executed because of the failure of the complainant himself regarding which one notice dated 05.05.2017 was served upon him, through counsel, in which it was mentioned that as the complainant himself has shown inability to get the sale deed registered in the time stipulated for registration, hence agreement has also expired and for the purpose of refund of the advance amount, 5 cheques were given to the complainant for making refund of the amount. The excess amount of Rs.25.00 lakhs was refunded through cheques because it was mentioned in the notice with request to the complainant to return one of the cheque so that another cheque of Rs.25.00 lakhs would be given to him for the balance

payment. The petitioners had made all the efforts bonafidely but the complainant did not present the cheques for payment. The petitioners have also filed a complaint to the police vide Annexure P-2 mentioning the correct facts of the agreement, which has expired and regarding the refund made. The allegation of the complainant/respondent No.4 is false and baseless, that same land has been sold out to some other persons, whereas in fact the petitioners were owners of the total 62500 sq.ft. of land out of which, one part is remaining and the petitioners are still in position to execute the sale deed, if any, specific performance is ordered by the Court. Respondent No.4 has not filed any civil suit for specific performance, therefore, it is prayed that no offence has been committed under Section 420 of the Indian Penal Code. Placing reliance on the judgment of Supreme Court in case of ***Chilakamarthi Venkateswarlu & Anr. Vs. State of Andhra Pradesh & Another***, reported in ***2019 SCC OnLine SC 948***, it is submitted that on plain reading of the FIR itself, no case is made out. Reliance has also been placed on the judgment of Supreme Court in case of ***Prof. R.K. Vijayasathy & Anr. Vs. Sudha Seetharam & Anr.*** Reported in ***2019 SCC Online SC 208*** and it is submitted that dispute between the petitioners and the respondent No.4 is essentially of civil nature, which is given colour of criminal offence. It is prayed that the FIR lodged against the petitioners be quashed.

3. State counsel appearing on behalf of the respondents No.1 to 3 submits that the petitioners in this case have hatched conspiracy to grab the amount from the complainant and executed a false agreement for sale of land by receiving an advance of Rs.2.25 Crore from the complainant. The same land was sold to some other person, therefore, the petitioners have committed the offence of criminal breach of trust, on the basis of which, FIR has been lodged. The petitioners, who are the partners and directors of the Ycon Developers Engineering Pvt. Ltd had mortgaged their landed property with Yes Bank for credit facility of Rs.67.00 Crore granted to Ycon Engineering Pvt. Ltd in the year 2013 and for the same, litigation was pending before the Debt Recovery Tribunal. Further on verifying about the cheques for making refund to the complainant of Urban Mercantile Cooperative Bank Limited, Raipur, it was found that all the cheques were issued by one account holder Sanjay Tiwari and the payments were made to Hotel Vinayak International, therefore, the contention of the petitioner is totally false. It is further submitted that no further such ground is made that as to what fundamental rights has been breached on the part of the petitioners, therefore, the petition under Article 226 of the Constitution of India is not maintainable. Placing reliance on the judgment of Supreme Court in case of ***State of Haryana & Ors. Vs. Bhajan Lal & Ors.***, reported in ***1992 SCC (Cri) 426***, it is submitted that this is not a case in which the High Court should exercise its power under Article 226

of the Constitution of India or under Section 482 of Cr.P.C.. Therefore, the petition is without any substance, which may be dismissed.

4. Counsel appearing on behalf of the respondent No.4 submits that FIR has been lodged against the petitioners on the basis of true facts. The petitioners have simply made an excuse in performing their part with the agreement dated 14.06.2016. The respondent No.4 had never expressed his inability to get the sale deed registered, even then, he was served with a notice mentioning expiry of agreement and the refunds made, regarding which, it is submitted that the petitioners have never given any cheques to the respondent No.4 for making refund. There had been litigation pending before the Debts Recovery Tribunal on the case initiated by the Yes Bank Limited, therefore, charge was created on the land, which was subject matter of the agreement. Finding a false pretext to avoid the agreement, the petitioners have sold out the same property to some other persons. The act on the part of the petitioners clearly falls under the definition of Section 405 of the Indian Penal Code. Therefore, it is not a case of civil nature. The agreement between the petitioners and the respondent No.4 is still existing as there had been no agreement for cancellation by both the parties. Reliance has been placed on the judgment of Supreme Court in case of ***M. Krishnan Vs. Vijay Singh & Another***, reported in **(2001) 8 SCC 645**, in which it was held that Court should be slow in interfering with the proceedings at the

initial stage. Further that only for the reason that civil remedy is available, it can not be said that bearing party in such agreement shall be absolved on such criminal liability. Therefore, it is prayed that petition be dismissed.

5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. Respondent No.4 has lodged FIR stating that he entered into an agreement with the petitioners on 14.06.2016 for purchase of 30000 sq.ft. of land of Kh. No.414/32, situated in Tatiband, Raipur and made advance payment of Rs.2.25 Crore for consideration. The petitioners had assured him that the sale deed will be executed by 30.09.2016 but subsequently, the petitioners constantly kept stalling for registering the sale deed. Subsequent to that complainant came to know that petitioners have entered into an agreement for sale for the same land with some other persons. On the basis of which, it is alleged that the petitioners had entered into a false agreement with the complainant and caused him loss of Rs.2.25 Crores.
7. There is no denial about execution of agreement dated 14.06.2016. The intention of the petitioners was clear to perform the agreement on their part is a question, which can not be answered at the present stage of investigation. As it has been replied by the respondents No.1 to 3 that although the subject matter of the agreement was under mortgage with Yes Bank

Limited, but the said Bank had made a prayer before the Debt Recovery Tribunal for creating charge on the said land. Apart from the claim of the petitioners that they had after notice of cancellation agreement with the complainant/respondent No.4 had made refund, but the cheques was found to be false in investigation, because the cheques that are mentioned in the notice to respondent No.4, were drawn by some other persons named as Sanjay Tiwari and the payments were also made to hotel Vinayak International. The petitioners have not come forward with any proof to show that they have made the refund to respondent No.4 as it is mentioned in the notice dated 05.05.2017. Therefore, the investigation has contradicted the claim of the petitioners. Investigation in this case is still pending. Further when the agreement for sale is executed between the parties, cancellation of the same can not be made unilaterally that also has to be a bi-party agreement. It is true that respondent No.4 has option to file civil suit in this case but the FIR and other material present make out criminal liability. After considering on the facts and circumstances of this case, it can not be said at this stage that the act of the petitioners does not fall under the definition of criminal breach of trust, which is defined under Section 405 of Cr.P.C.. Therefore, I do not find any substance in this petition and it is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge