

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1604 of 2019

Arising Out of PS. Case No.-134 Year-2019 Thana- DIGHA District- Patna

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1. JHULAN RAI, aged about 50 years, S/o Dhukh Haran Rai
 2. Kunal Rai, aged about 28 years, S/o- Jhulan Rai
 3. Gautam Rai, aged about 24 years, S/o- Jhulan Rai
- All are resident of Digha, P.S.- Digha, District- Patna.

... .. Petitioners

Versus

1. The State Of Bihar Through The Chief Secretary, Govt. Of Bihar, Patna.
2. District General of Police, Govt. of Bihar, Patna. Bihar, Patna.
3. Inspector General of Police, Patna. Patna.
4. Deputy Inspector General of Police, Patna. Patna.
5. Senior Superintendent of Police, Patna. Patna.
6. Deputy Superintendent of Police, Kotwali, Patna. Patna.
7. Officer-in-charge of Digha Police Station, Digha, Patna. Patna.
8. Subodh Kumar Gupta S/o Rameshwar Prasad Gupta Resident of - Back of Central Bank of India, Digha Ghat, P.S.- Digha, District- Patna.
9. Ravi Kumar S/o Late Narayan Sao Resident of - Back of Central Bank of India, Digha Ghat, P.S.- Digha, District- Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Vinod Kumar, Advocate
For the Respondent/s : Mr.Md. Nadim Seraj, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 06-02-2020

Heard learned counsel for the petitioners and
learned counsel for the State as also learned counsel
representing the private respondent nos. 8 & 9.

2. Petitioners in the present case are seeking



quashing of the Digha P.S. Case No. 134/2019 for offences under Sections 420, 406, 504, 506, 323, 341/34 of the Indian Penal Code. Allegations against petitioner no. 1 is that he had fraudulently represented to the informant (respondent no.8) that the land in question is his Khatiyani land whereas in fact the land was already an acquired land by Housing Board. Petitioner no. 1 received a sum of Rs. 40 Lakhs from the informant (respondent no. 8) and Respondent no. 9 and when respondent came to know that they have been cheated and demanded back their money, they were abused and assaulted by petitioner no. 1 and his two sons (petitioner nos. 2 & 3).

3. Learned counsel for the petitioners submits that it is at best a case of civil dispute inasmuch as it would appear that the private respondents had paid the amount in question to the petitioners in lieu of the land which was agreed to be sold to them and after paying the said amount they raised an issue of title and refused to get the sale deed executed and registered.

4. In order to support his contention learned



counsel for the petitioners has taken this court through the copy of the agreement executed between the parties. The agreement states that the petitioner no. 1 has got the land in question as his Khatihani Land and he is the only successor of the said land and is in peaceful possession of the land.

5. It is the submission of learned counsel for the petitioners that the private respondents are in fact the professional persons who are engaged in sale and purchase of land and they being fully aware of the condition of land in possession of the petitioner no. 1 entered into the agreement to sell and agreed to purchase the land.

6. It is also submitted that the respondent no. 8 got an electricity connection in his name and then some shops have been constructed thereon and it is the private respondent no. 8 who was getting rent from the said shops.

7. Referring to Annexure '6' to the present application, learned counsel submits that respondent no. 8



had earlier entered into an agreement to sell with another lady and that shows the involvement of the respondents as a professional person engaged in the business of purchase and sale of the land.

8. Learned counsel has submitted that although the anticipatory bail application of these petitioners had been rejected up to this Court in Cr. Misc. No. 33114/2019, but that rejection was based on a submission of the informant that the land in question was acquired long back by the Housing Board and the said plot was allocated for construction of a police sub-station, but this petitioner no. 1 represented to the informant that the land is his Khatihani land and because of that misrepresentation with an intention to cheat the informant had paid Rs. 40 Lakhs to the petitioner no. 1. It is only when the petitioner no. 1 was arrested one day while carrying on construction work besides the land, the informant came to know that the land in question is an acquired land. According to learned counsel for the petitioners, it was a wrong statement on the part of the



informant that the land in question has been acquired and that there is no evidence brought by the informant in this regard.

9. Learned counsel has further in order to strengthen his argument relied upon the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Police and other Vs. Devender Anand** reported in **AIR 2019 SC 3807**. Paragraph 2.2 of the same has been read out in support of the proposition of law that in case of a dispute of civil nature continuation of a criminal proceeding would be an abuse of the process of the Court. He has further relied upon the judgment of the Hon'ble Apex Court in the case of **Rama Devi Vs. State of Bihar** reported in **2011 (1) PLJR 20(SC) = (2010) 12 SCC 273** to support his contention that a case of civil nature cannot be allowed to be converted in a criminal proceeding.

10. Learned counsel for the State as well as private respondents submits that the petitioner no. 1 had fraudulently allured the private respondent no. 8 to enter



into an agreement for sale of a piece of land which was already under acquisition and when the petitioners came to know about the fact that the land were the acquired land, they called upon the petitioners to pay back their amount which the petitioner no.1 did not pay and all the petitioners abused and assaulted the respondent nos. 8 & 9.

11. Learned counsel for the State has pointed out from statements made in the counter affidavit filed on behalf of respondent nos. 5 to 8 that the case has been supervised from the level of Dy.S.P. and in course of investigation the allegations have been found true.

12. It has been further submitted that only because the allegations made in the F.I.R. to some extent indicates that the informant may have another remedy of civil nature for realization of money, the petitioners cannot be allowed to argue that the F.I.R. be quashed even though it discloses commission of cognizable offence. Reference in this regard has been made to the judgment of the Hon'ble Apex Court in the case of **Rajesh Bajaj**



Vs. NCT of Delhi reported in **AIR 1999 SC 1216** with emphasis on paragraph 9, 10 & 11.

13. It has also been argued that although the anticipatory bail application of the petitioner no. 1 was rejected vide order dated 30.09.2019 passed in Cr. Misc. No. 33114/2019 taking note of the submission of the informant that he had given the informant to understand that the piece of land in respect of which agreement is being entered into is his Khatiyani land but the same was found to be an acquired piece of land by the Housing Board, in the present application which has been filed after rejection of the anticipatory bail petition, the petitioners have not made even a bald statement to say that the land in question is not an acquired piece of land.

14. Learned counsel for the parties have thus submitted that at this stage when the F.I.R. is still under investigation, some materials have been collected indicating that the allegations are true, this court need not exercise its extraordinary writ jurisdiction to curtail the ongoing investigation. Learned counsel also submits that a



mere lodging of F.I.R. is nothing but an entry in the general register/F.I.R. book of the police station and at this stage the likelihood of the petitioners being charge-sheeted or the credibility of the evidence are not required to be judged by the officer-in-charge registering the F.I.R. it is, thus, submitted that the prayer to quash the First Information Report is fit to be rejected.

15. The judgments cited on behalf of the petitioners have also been distinguished which this court will deal hereinafter.

16. Considering the facts and circumstances of the case as stated hereinabove, the submissions made on behalf of the parties, this court is of the considered opinion that the prayer to quash the First Information Report cannot be accepted as not only the investigation is going on but even prima-facie at this stage it has been informed that the allegations have been found true. The submissions also indicate that the land in respect of which the petitioner no.1 alleged to have represented to the private respondents is an acquired land for construction of Police



Station but the said petitioner has received the money on account of the same, learned counsel for the petitioners has though, disputed this position, these allegations are the subject matter of investigation.

17. Learned counsel for the petitioners has though disputed orally that the land in question are not the acquired piece of land but what this Court finds from the submission of learned counsel for the petitioners is that it is nothing but a bald statement without there being any clinching material to support their contentions. In fact the contention of learned counsel on behalf of the petitioners is that this Court should rely upon the various annexures enclosed with the writ application and even though the veracity of those annexures and documents are disputed, this Court should record a finding and by taking a view that the petitioners have got title, right and possession over the land, declare that the lodgment of the F.I.R. against them is illegal and the same be quashed.

18. In the opinion of this Court, the documents enclosed with the writ application at this stage are not



being the admitted documents, this Court would not be legally in a position to rely upon them for the purpose of quashing of the F.I.R. The fact remains that the anticipatory bail application of the petitioner no. 1 was rejected on the ground that the land is an acquired piece of land in respect of which the petitioner no. 1 had entered into an agreement misrepresenting the informant but even after rejection of the same the said petitioner has not come out with any case based on any reliable and admitted document in the present writ petition showing that the land is not an acquired piece of land. When the investigation in this respect is still going on, there are also allegations of assault and the investigating agency has filed affidavit saying that the allegations have been found true and the Court has no admitted material on record to take a view, in the opinion of this Court it will be an error on the part of this Court to rely upon those documents.

19. Now coming to the judicial pronouncements on which reliance has been placed by learned counsel for the petitioners, this court is of the view that so far as the



proposition that a purely civil dispute cannot be allowed to set criminal law in motion and cannot be given a colour of criminal proceeding is not in dispute. The proposition has been well settled over the period but again in the facts of the present case the judgments on which reliance has been placed by learned counsel for the petitioners would not come to their rescue. In the case of **Commissioner of Police (supra)** the facts which have been taken note of in paragraph 2 of the judgment would show that in the said case in a preliminary enquiry it was concluded by the Sub-Inspector of Police, though in the second attempt that the complainant had given his consent to the registration of the sale deed and discharge of the liability of the Bank, even though the mortgage of the property was revealed to him on the date of execution of the sale deed. In view of the said material available on the record the Hon'ble Supreme Court was of the following view:

"4.2: It is required to be noted that after having come to know that the property was mortgaged with the Andhra Bank, the original complainant himself paid the mortgage money and got the mortgage redeemed. Not only that, thereafter, he



got the sale deed executed in his name. Thereafter also, he filed the complaint with the learned Magistrate, being an application under Section 156(3) of the Cr.P.C., which came to be rejected by the learned Magistrate, vide order dated 27.03.2015. The said order was not assailed by the complainant. It appears that thereafter he filed a private complaint under Section 200 Cr.P.C. which was pending before the learned Magistrate. Despite the above, he filed a writ petition before the High Court, which is nothing but an abuse of the process of law. The criminal proceedings have been initiated by the original complainant to settle the civil dispute. Therefore, in the facts and circumstances of the case, the Investigating Officer and other police officers were justified in not registering the FIR and in coming to the conclusion that the complaint be filed. The earlier opinion on preliminary inquiry was never placed before the DCP. Thereafter, on thorough investigation/inquiry and considering the facts and circumstances of the case narrated hereinabove, when it was opined that the dispute between the parties is of a civil nature, the High Court ought not to have issued further directions. The High Court ought to have closed the proceedings. Not only the High Court has issued further directions, but even has imposed costs and an action against the appellants 3 to 5 herein which, in the facts and circumstances of the case, is not sustainable."

20. Again in the case of Rama Devi (Supra)

the Hon'ble Supreme Court was pleased to set-aside the order taking cognizance passed by learned Sub-Divisional Judicial Magistrate, Patna when it was found that the



learned Sub-Divisional Judicial Magistrate had taken cognizance and decided to issue summon to the appellant before the Hon'ble Supreme Court on a totally erroneous consideration of the material. The learned Sub-Divisional Judicial Magistrate had taken a view that the appellant was liable to be proceeded against because she had attested the sale deed which was executed by Prabhu Singh who had sold the land to the appellant, was the full brother of Sitaram Singh who had earlier sold the entire land to different persons. The complainant who had purchased the land from the appellant alleged that Prabhu Singh the appellant's vendor and brother of Sitaram Singh had acted as an attesting witness in the sale-deeds executed by Sitaram Singh. By giving a finding that the appellant had attested the sale deed earlier executed by Sitaram Singh and then land was sold by her to the complainant, the learned Sub-Divisional Judicial Magistrate took a view that she was aware of the earlier sale and hence she was liable to proceed against. It was submitted before the Hon'ble Supreme Court that the learned Sub-Divisional Judicial



Magistrate had failed to look into the facts appearing from the records where in fact the earlier sale deeds were not having the signature of the appellant as an attesting witness. Once this fact was noticed by the Hon'ble Supreme Court that the appellant was not the attesting witness then it was found that the whole view taken by the learned Sub-Divisional Judicial Magistrate was erroneous and hence the appeal was allowed.

21. In the present case, the aforesaid judgments cannot be applied for the simple reason that the facts of the present case are quite different and distinct from those cases. This Court is reminded of the judgment of the Hon'ble Supreme Court in the case of **Bharat Petroleum Ltd. Vs. N.R. Vairamani** reported in **(2004) 8 SCC 579** wherein their Lordships have held that the judgment of the Court should not be cited like an Euclid's theorem because a slight change in the facts of the case would make sea difference in the judgment of the Court.

22. In the case of Rajesh Bajaj (supra) in



paragraph 9, 10 and 11 the Hon'ble Supreme Court
observed as under:

"9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. In *State of Haryana vs. Bhajan Lal* (1992 AIR SCW 237) (supra) this Court laid down the premise on which the FIR can be quashed in rare cases. The following observations made in the aforesaid decisions are a sound reminder (para 109 of AIR):

"We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."



10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code (illustrations 'f') is worthy of notice now:

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities."

23. Here is a case where there are allegations that the petitioner no.1 had fraudulently entered into an agreement to sell an acquired land which was long back acquired by the Housing Board for construction of Police Station and received a sum of Rs. 40,00,000/- (Forty



Lakhs). The averments made in the agreement that the petitioner no.1 is having right, title and is in possession of the land if found false, it may constitute prima-facie misrepresentation, there are also allegations against all the petitioners that they had abused and assaulted the private respondents and the matter is still under investigation. This being the position, Court declines to quash the First Information Report.

24. This Application has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	07.02.2020
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