

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.49032 of 2018

Arising Out of PS. Case No.-348 Year-2018 Thana- MOHANIYA District- Kaimur (Bhabua)

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Ajay Krishna Rastogi Son of Late Saryu Madhav Rastogi, resident of Village-
Sakari, P.S. Kudra, District- Kaimur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Manju Bala Rastogi W/O Dinesh Chandra Rastogi, D/O Late Saryu Madhav Rastogi R/O Meruth 154/7 Jagriti Bihar, Meruth (U.P.) D/O Late Saryu Madhav Rastogi, R/O Rastogi Niwas, R/O Village- Sakari, P.S. - Kudra, Post- Sakari, District- Kaimur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Tiwary, Advocate
For the Opposite Party/s : Mr. Naveen Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

6 08-09-2022 1. Heard learned counsel appearing on behalf of parties.

2. Present is an application for quashing the First Information Report of Mohania P.S. Case No. 348 of 2018 registered on 13.06.2018 under Sections 420, 419, 467, 468, 471 and 34 of the Indian Penal Code, which was lodged by opposite party No. 2, against the petitioner and other persons.

3. The prosecution case in brief, that one Manju Bala



Rastogi filed a Complaint before the learned Chief Judicial Magistrate, Kaimur at Bhabua on 02.06.2018 stating thereof that she married with one Dinesh Chandra Rastogi and residing at Merath. Accused/petitioner is own brother and a jealous person, who want to cause a loss of her property, by way of impersonation, where accused/petitioner actively participated to execute a sale deed No. 664 dated 03.02.2018 for Plot No. 31 area 1.40 decimal in favour of one Kashmira Devi/accused No. 1, with the help of deed writer, where petitioner himself stand as a witness.

4. Learned counsel for petitioner submitted that aforesaid complaint case which has been registered as Complaint Case No. 686 of 2018, was forwarded to Mohania police station for registration and institution of F.I.R., consequent upon Mohania P.S. Case No. 348 of 2018 was registered under Sections 420, 419, 467, 468, 471/34 of the Indian Penal Code against this petitioner. It is further submitted by learned counsel that complainant/informant is the own sister of accused/petitioner, where present F.I.R. has been lodged with an ulterior motive purely for private and personal grudge, as informant did not want to returned back the cash received from petitioner through various bank transactions on different



occassions as sister. It is also submitted that false implications in present criminal case further get its strength as informant filed a Civil Suit bearing case no. 571 of 2018 dated 02.06.2018, on the same day, on which the present complaint was lodged, regarding same property, only to create a pressure through implication in criminal prosecution. Learned counsel further submitted that no case is made out under Section 420 of the Indian Penal Code, as allegation failed to satisfy its essential ingredients. It is submitted that complaint was lodged after four months of alleged execution of sale deed.

5. In support of submission, learned counsel relied upon the report of Hon. Apex Court as reported in the matter of **Uma Shankar Gopalika versus State of Bihar and Another, (2005) 10 Supreme Court Cases 336**. It would be appropriate to reproduce the relevant part of para-6 of the said judgment for the sake of Convenience.

“.....It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention



to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 of the Indian Penal Code”.

6. In Zandu Pharmaceutical Works Ltd. Vs. Mohd. Sharaful Haque & Another [(2005)1 SCC 122] [:2005(1) PLJR (SC) 95]:

“.....It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought



to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto”.

7. It is submitted that in present alleged transaction, admittedly, petitioner is not a beneficiary, rather he is only a witness of sale deed, where prosecution initiated for only reason that photographs of informant appearing fake and, as such, impersonation was claimed.

8. It is further submitted that in present case the purchaser, Kashmira Devi, never came forward with complain that she has been cheated by informant or this petitioner.

9. It appears that notice was served upon Opposite Party No. 2/informant, but failed to join proceeding.

10. The essential ingredients of Section 420 of the Indian Penal Code are as follows:

(i) cheating

(ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and



(iii) mens rea of the accused at the time of making the inducement.

11. Cheating is defined under section 415 of the Indian Penal Code. The Hon'ble Supreme Court in the case of **Hridaya Ranjan Prasad Verma and others vs. State of Bihar and Another**[(2000)4 SCC 168] observed in paragraph nos.13, 14 and 15 of its judgment as follows:

"13. Cheating is defined in Section 415 of the Code as, "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which actor omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation- A dishonest concealment of facts is a deception within the meaning of this Section. The section requires -
(1) Deception of any person.
(2)(a) Fraudulently or dishonestly inducing that



person

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he maybe induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

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.”

12. It would be relevant to note the observations of Hon'ble Supreme Court in the case of Indian Oil Corporation V. NEPC India Ltd. And Others [(2006)6 SCC 736]:



“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP, this Court observed :

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to



exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

13. In **Bhajan Lal [State of Haryana V. Bhajan Lal, [1992 Supp(1) SCC 335]**, Hon'ble Supreme Court laid down the principles for exercising jurisdiction by the High Court, in exercise of its powers under Section 482 Cr.P.C. to quash an F.I.R. by way of illustrations, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, which is reproducing here below for the sake of better understanding and convenience:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers



under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a



cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just



conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. Now, coming to present case, it appears that the petitioner only signed the sale deed as a witness. It also appears that informant is own sister and present F.I.R. was lodged on same day, when title suit was filed regarding alleged property.



Hence, in opinion of this Court, the case of petitioner falls under illustrations, 1, 5 and 7 as laid in paragraph no. 102 of the judgement of the Hon'ble Supreme Court in the case of **Bhajan Lal (Supra)**. Thus, in the opinion of this Court, the direction of the Court to investigate into the complaint and lodging of F.I.R. thereto, as Mohania P.S. Case No. 348 of 2018, dated 13.06.2018, amounts to abuse of the process of the Court and are liable to be quashed.

15. In view of the above, this Court is of the opinion that no useful purpose will be served in continuing with the present proceedings. Resultantly, Mohania P.S. Case No. 348 of 2018 lodged on 13.06.2018 and the proceedings emanating therefrom are hereby quashed.

16. Accordingly, quashing petition is allowed.

(Chandra Shekhar Jha, J)

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