IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34671 of 2016

Arising Out of PS. Case No.-127 Year-2013 Thana- SHRIKRISHNAPURI District- Patna

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Ram Pravesh Rai S/o late Kamla Rai resident of Goharua House, 19 Patliputra Colony, P.S. - Patliputra, Patna - 800013, presently residing at Gorarua House ,213 Patliputra Colony, P.S. - Patliputra, Patna - 800013.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Rabindra Kumar Singh S/o Ram Ashish Singh R/o House No. M2/15, Shri Krishnapuri, Boring Road, P.S. - S.K. Puri, District - Patna.

... ... Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Binod Kumar Singh, Advocate
		Mrs. Vagisha Pragya Vackaknavi, Advocate
For the O.P. No.2	:	Mr. Surendra Kumar Singh, Advocate
For the State	:	Mr. Anand Mohan Prasad Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

C.A.V. ORDER

24 25-02-2023 The present application filed under section 482 of the Cr.P.C. for quashing the entire criminal proceeding arising out of Sri Krishnapuri P.S. Case No.127 of 2013 dated 08.04.2013 (G.R. No.2017/2013) registered u/s 406/420 of the IPC and u/s 138 of Negotiable Instrument Act pending in the court of learned J.M.- 1st Class, Patna.

The prosecution story, in brief, is that the informant namely, Rabindra Kumar Singh has taken the premises under lease agreement for coaching institute, namely, “Brilliant Science Coaching” from the petitioner. He deposited Rs.10 lakhs as security deposit and paid Rs.15 lakhs for construction work to the petitioner on 19.08.2010 and signed a lease agreement. It is alleged that the informant heard a rumour that the petitioner has given the said premises under a different lease agreement to Ruban Hospital. When the informant queried about this to the petitioner, the petitioner told him that total amount of Rs.25 lakhs will be returned with interest and accordingly first installment of Rs.2.50 lakh was given and the same was presented in Axis Bank, Boring Road Branch, Patna in the account of coaching institute which bounced. The petitioner gave another cheque, which was presented before the Bank but it also bounced.

Learned counsel for the petitioner submits that the present criminal case is instituted with mala fide intention of the informant to evade payment of huge arrears of rent due to M/s Ram Pravesh Rai Estate Pvt. Ltd. which is represented by the petitioner as Managing Director of the said company. It is submitted that the petitioner executed the lease agreement dated 19.08.2010 on behalf of M/s Ram Pravesh Rai Estate Pvt. Ltd. with Brilliant Science Coaching which was represented by the informant and other partners whereby the petitioner leased out his lease premises to the accused on monthly rental of Rs.3,15,000/- only for 15,000 sq feet (lease area) @ Rs.21/per sq. ft. for running the Brilliant Science Coaching. As per the lease agreement it was also agreed that 6% amount will be increased every new year as rent and the said rent will have to be paid in advance i.e. in the start of month (true copy of the lease agreement is annexed as annexure-2 of the petition). He further submits that Rs.10 lakhs was given as security deposit by the informant and the petitioner handed over the leased premises to the informant for running his coaching business and it was free from all encumbrance. The lease agreement was effective from 19.08.2010 till next five years i.e. till 31.12.2015, if both parties agree they may continue the above said agreement after said five years. It was also agreed by both parties that whenever the rented premises will be vacated during lease period three months prior notice will be necessary for both the parties. It is further submitted by the counsel for the petitioner that as per the lease agreement the petitioner received security deposit of Rs.10,00,000/- only and Rs.15,00,000/- as advance rent. The petitioner also received Rs.12,55,922/- in total towards monthly rental for 19 months instead of Rs.61,17,300/- i.e. monthly rent of Rs.3,15,000/- for 12 months (01.09.2010 to 31.03.2012) which comes to Rs.37,80,000/- only and with enhanced monthly rent @ 6% i.e. @ Rs.3,33,900/-

only after completion of first one year for further 7 months (01.09.2011 to 31.03.2012) which comes to Rs.23,37,300/- only. He further submits that the informant has cheated the petitioner and misappropriated the huge sum of money which is arrears of monthly rent due to the petitioner from the informant amounting to Rs.33,61,378/- after deducting the security amount of Rs.10,00,000/-. The informant has caused wrongful loss to the petitioner. He further submits that in the said circumstances the instant FIR being Patliputra P.S. Case No.124 of 2013 dated 17.04.2013 has been lodged by the petitioner against the informant and others u/s 406 and 420 of IPC (annexed as Annexure-3 of the petition).

He further submits that the informant has instituted the present mala fide FIR against the petitioner in a police station having no territorial jurisdiction as the alleged incident has taken place which falls within the ambit of Patliputra police station. In the present case, the police submitted final report no.188 of 2015 dated 19.05.2015 but surprisingly, the SSP, Police called for an opinion from the Public Prosecution Officer who gave an incorrect and misleading opinion which will be evident from the record of the case. The petitioner made applications before the I.G., Patna zone, Patna on 29.02.2016 raising his grievances but it appears that no action was taken and the petitioner was illegally and under a deep rooted conspiracy between the I.O. of the aforesaid case, and the informant and his partners were arrested on 02.07.2016 at 10:30 p.m. No offence is made out so far the alleged offence u/s 406 and 420 of IPC is concerned, in fact from the plain reading of the written report of the informant if accepted on its face value as true then there is no allegation of cheating or criminal breach of trust. He further submits that the petitioner is the Managing Director of M/s Ram Pravesh Rai Estate Pvt. Ltd and the said company has not been made accused, therefore the criminal case against the petitioner in absence of arraying the aforesaid company as accused is not maintainable in view of law. He further stated that without complying such provisions, if summons are issued in the name of the officers of the company, then such action is illegal, unjustified and liable to be quashed being violative of mandatory provision u/s 305 of Cr.PC. He further submits that after re-investigation the office has not filed the charge sheet in the present case, therefore Senior SP has been called for in the present case. By the order dated 01.12.2022, the charge sheet has been filed u/s 420 and 406 of IPC on 09.12.2022 against the petitioner. Learned counsel for the petitioner submits that no offence is made out against the petitioner, so far as section 406 and 420 of IPC is concerned, he relied upon the judgment of Apex Court in the case of ***Sushil Sethi and anr. v/s State of Arunachal Pradesh and ors.*** reported in ***AIR 2020 765***. Learned counsel for the petitioner relied upon the para- 7.2 of the said judgment, in the case of ***Vesa Holdings Private Limited (2015 AIR SCW 2245) (supra)***, it is observed and held by the Supreme Court 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. It is further observed and held that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is further observed and held that even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under section 420 IPC can be said to have been made out.

In para 7.5 of the said judgment, in the case of ***Sharad Kumar Sanghi (2015 AIR SCW 4202) (supra),*** the Supreme

Court had an occasion to consider the initiation of criminal proceedings against the Managing Director or any officer of a company where company had not been arrayed as a party to the complaint. In the aforesaid decision, it is observed and held by this Court that in the absence of specific allegation against the Managing Director of vicarious liability, in the absence of company being arrayed as a party, no proceedings can be initiated against such Managing Director or any officer of a company. It is further observed and held that when a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability. In the present case, the company has not been made a party in the complaint petition.

In para-7.6, of the said judgment in the case of ***Joseph Salvaraja A v. State of Gujarat (2011) 7 SCC 59***, it is observed and held by the Apex Court that when dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.

Learned counsel for the petitioner further relied upon the judgment in the case of ***Veer Prakash Sharma v/s Anil Kumar Agrawal and ors.*** reported in ***Supreme Court cases (2007) 7***

SCC 373. In para-8 of the said judgment, it is stated that the dispute between the parties herein is essentially a civil dispute. Non-payment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust. No offence, having regard to the definition of criminal breach of trust contained in section 405 of the IPC can be said to have been made out in the instant case. Section 405 of the IPC reads, thus:

> "**405. Criminal breach of trust.** – Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'."

Learned counsel for the petitioner further relied upon the judgment in the case of ***Thermex Limited and others vs. KM Johny and others*** reported in ***(2011) 13 SCC 412***. Para-37 of the said judgment states that it is settled law that the essential ingredient for an offence under section 420, which we have already extracted is that there has to be dishonest intention to deceive another person. We have already quoted the relevant allegations in the complaint and perusal of the same clearly shows that no such dishonest intention can be seen or even inferred inasmuch as the entire dispute pertains to contractual obligations between the parties. Since the very ingredients of section 420 are not attracted, the prosecution initiated is wholly untenable. Even if we admit that allegations in the complaint do make out a dispute, still it ought to be considered that the same is merely a breach of contract and the same cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. Inasmuch as there are number of documents to show that the appellant Company had acted in terms of the agreement and in a bona fide manner, it cannot be said that the act of the appellant Company amounts to a breach of contract.

In para-38 of the said judgment, it is stated that though respondent 1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with the appellant company by initiating the criminal prosecution, it is pointed out that appellants 2 to 8 are the ex-Chairperson, ex-Directors and senior managerial personnel of appellant 1 company, who do not have any personal role in the allegations and claims of respondent 1. There is also no specific allegation with regard to their role.

No counter affidavit has been filed on behalf of the O.P. No.2 in the present case. He only submits that the petitioner has cheated the informant. The informant started his coaching institute from 05.09.2011 and started paying rent as the petitioner told him that some time will be taken for the construction work. On 01.01.2012 the coaching institute was temporarily closed for construction work. The informant heard a hearsay that the petitioner has given the premises under a different lease agreement to Ruban Hospital. Thereafter, the informant met the petitioner on 19.01.2013, the petitioner told him that total amount of Rs.25 lakhs will be returned with interest and and accordingly the first installment of Rs.2.50 lakh was given by cheque No.494886 dated 21.01.2013 of the State Bank of India, Boring Road Branch, Patna. It was presented on 24.01.2013 in Axis Bank, Boring Road Branch, Patna in the account of coaching institute which bounced. The petitioner gave another cheque on 08.03.2013 which was present before the Bank but it also bounced. He further submits that whenever the informant talked to the petitioner, he used to make lame excuses and ultimately refused to make payment and said that he has made no agreement with him. The informant has also annexed four documents along with his written report addressed to S.H.O. S.K. Puri, police station. Accordingly, the said FIR was registered against the petitioner.

Having heard learned counsel for the respective parties at length, perusing the materials available on record and the considering the averments made on behalf of the respective parties, in my considered opinion, it is a fit case where this Court should exercise its jurisdiction under Section 482 Cr.P.C.

In view of the above and for the reasons enumerated in the foregoing paragraphs, this application is allowed and the entire criminal proceedings arising out of Sri Krishnapuri P.S. Case No.127 of 2012 is quashed.

(Anjani Kumar Sharan, J)

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