

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54829 of 2016

Arising Out of PS. Case No.-393 Year-2014 Thana- SHRIKRISHNAPURI District- Patna

Arvind Kumar Late Sahdeo Mahto, Resident of 45-B, Sahdeo Mahto Marg,
Police Staition - Sri Krishnapuri, District- Patna.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan
For the State	:	Mr. Jharkhandi Upadhyay
For the O.P. No. 02	:	Mr. Sunil Kumar Adv

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 07-04-2023 This application has been filed on behalf of the petitioner for quashing the order dated 21.12.2015 passed by learned Judicial Magistrate, 1st Class, Patna in Sri Krishnapuri P.S. Case No. 393 of 2014 whereby and whereunder the learned Magistrate had taken cognizance under Sections 406 and 420 of the Indian Penal Code.

This application was heard earlier and by order dated 24.05.2017 further proceedings against the petitioner was stayed.

I have heard the learned counsel for the petitioner, learned counsel for the opposite party No. 02 and learned APP



for the State.

“Prosecution story in short is that informant Abhijit Kumar in his written statement lodged before the SHO, Sri Krishnapuri has alleged interalia that he had entered into an agreement with the petitioner for taking the house of the petitioner on lease situated at 45B, Sahdeo Mahto Marg, Sri Krishanapuri for business and as per the agreement the petitioner had agreed to let out the house to the informant on a monthly rental payment of Rs. 1.60 lacs. The said lease agreement was to be registered. It is further alleged that on the assurance of the above named persons, the informant had paid the entire amount through account payee cheque and RTGCS, which fact is mentioned in the memorandum of understanding. Consequently, a MOU was signed between the parties to the agreement and subsequently lease deed was to be executed shortly but on one pretext or another, the same was deferred and when the informant approached the petitioner for execution of lease deed and for running business, the petitioner flatly refused although the petitioner had kept Rs. 10 lacs of the informant and is trying to disgorge the same. Thus, under the same circumstances, the petitioner had given false promise and by indulging in false hood took Rs. Lacs which fact came to his



knowledge today as he had refused to execute the lease deed and also disgorge the money and thereby committing cheating and breach of trust.”

It has been submitted by the learned counsel for the petitioner that the petitioner and informant entered into an MOU and pursuant to the MOU the premises of the petitioner was retained by the informant for ten months after paying the amount of Rs. 9,60,000/- to the petitioner. Subsequently, the informant could not start the business and therefore he vacated the premises after ten months and after vacation, Title Suit No. 11 of 2015 was filed by the petitioner against the informant which is still pending.

Learned counsel for the petitioner further submits that from reading of the entire FIR, no offence is made out against the petitioner under Section 406 and 420 of the Indian Penal Code and he also submits that the dispute between the parties is of civil nature and for the same no criminal case shall be continued.

Learned counsel for the petitioner has also relied upon the judgment of ***Anand Kumar Mohatta Vs. State (Government of N.C.T. of Delhi) 2019 11 SCC 706*** and of which Paragraph No. 24 of the judgment reads as follows:-



“Having given our anxious consideration, we are of the view that assuming that there is a security deposit of Rs. 01 Crore and that he has misappropriated the dispute between the two parties can only be a civil dispute”

Learned counsel for the informant and the State have submitted that in the present case, from reading the FIR and from the materials available on record, offence is made out under Section 406 and 420 and the case is not fit for quashing at this stage of cognizance.

I have considered the submissions of the parties.

It is an admitted fact that the petitioner and the informant had entered into an MoU and at the time of MoU the informant had given Rs. 9,60,000/- to the petitioner. But after retaining the premises in question for ten months the informant vacated the premises and the petitioner demanded rent of the premise @ 1,60,000/- per month from the informant and on failure of the informant to pay the entire dues of rent, the petitioner has filed the title suit as mentioned above.

Considering the law laid down by the Hon'ble Supreme Court in the case of ***Anand Kumar Mohatta Vs. State (Government of N.C.T. of Delhi) (Supra)***, i.e. *“misappropriation of security dispute between two parties can only be a civil dispute”*, this application is allowed.



Accordingly, the order dated 21.12.2015 passed by
learned Judicial Magistrate, 1st Class, Patna in Sri Krishnapuri
P.S. Case No. 393 of 2014 is hereby quashed.

(Sandeep Kumar, J)

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