

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.380 of 2017

Arising Out of PS. Case No.-100 Year-2017 Thana- DANAPUR District- Patna

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1. Pravin Kumar, son of Maheshwari Prasad Singh, C.M.D. of Kanishka Buildcon Pvt. Ltd. having its office at Vidyanand Maheshwari Complex, Manglam Vihar, Sudha Dairy, Bootu Road, Bailey Road, P.S.- Danapur, District- Patna.
 2. Shyam Sunder Singh, son of Krishnanand Singh, resident of Vidyanand Maheshwari Complex, Manglam Vihar, Sudha Dairy, Bootu Road, Bailey Road, P.S.- Danapur, District- Patna.

... .. Petitioners

Versus

1. The State of Bihar through the Director General of Police, Government of Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Deputy Superintendent of Police, Danapur, District- Patna.
5. The Officer-in-Charge of Danapur Police Station, District- Patna.
6. Vikash Kumar, S/o Late Ajay Kumar @ Late Ajay Kumar Rai, R/o Flat No.- 104, First floor, Vidyanand Maheshwari Complex, Judges colony, South Baily Road, Saguna, P.S.- Danapur, District- Patna 801503

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Sarvan Kumar, Advocate
For the Respondent/s	:	Mr. Md. Nadeem Seraj, G.P.-5
For respondent no.6	:	Mr. Patanjali Rishi, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 19-04-2023

This application has been filed for quashing of the F.I.R. vide Danapur P.S. Case No. 100 of 2017 dated 21.02.2017 registered for the offences under Sections 406, 420, 341, 323, 379, 504, 506/34 of the Indian Penal Code.

During the pendency of this case, Interlocutory Application No.01 of 2022 was filed by the petitioner challenging the cognizance order dated 08.01.2018 passed by learned A.C.J.M.-1, Danapur.



Interlocutory Application No.01 of 2022 is allowed permitting the petitioner to challenge the order of cognizance dated 08.01.2018.

As per the F.I.R. the informant had given a piece of land measuring area of 13 katha 4 dhruki to Kanishka Buildon Private Limited for construction of an apartment through an agreement dated 15.02.2011, in which a condition was mentioned that the construction work of apartment will be completed within three years. It is also alleged that before three months of occurrence when the informant met the petitioner no.1, who is the Chief Managing Director of the said Kanishka Buildcon Private Limited and demanded his share of constructed flats and the amount, the petitioner no.1 denied to pay the amount and insulted the informant and also threatened him of dire consequences. He also threatened to kidnap the son of the informant who is studying in Delhi. It is further alleged that on 20.02.2017 the petitioner no.2, who is the Project Manager of Kanishka Buildon Private Limited and four other persons assaulted the driver of the informant and snatched Rs.45,000/-. When it came to the knowledge of the informant, he met with petitioner no.2 and asked him why he had beaten his driver, upon which, the petitioner no.2 threatened the informant that he



will kill his entire family.

Learned counsel for the petitioner submits that on a bare perusal of the F.I.R. it would appear that it is a civil dispute which has been tried to be given a colour of criminal proceeding and therefore, the F.I.R. is an abuse of the process of the Court.

Learned counsel for the petitioner has relied upon a judgment of this Court dated 07.05.2018 rendered in the case of ***Pankaj Agrawal & Ors. vs. The State of Bihar & Ors.*** reported in ***MANU/BH/1053/2018***.

Learned counsel for the respondent no.6 and the State have been heard.

I have considered the submissions of the parties. I have also perused the materials on record.

This case was heard on 17.01.2023 by a co-ordinate Bench of this Court. On that date, it was submitted by the petitioners that certain steps are required to be taken in furtherance of the agreement dated 15.02.2011 regarding installation of generator (which is already purchased) and electric pannels. The submission of the petitioners has not been controverted by learned counsel for respondent no.6. Accordingly, the case was adjourned.

Today, it has been submitted by the parties that



pursuant to earlier order of this Court new generator has been installed in the apartment.

From perusal of the F.I.R. it appears that the dispute is of civil nature as it arises out of an agreement dated 15.02.2011. A co-ordinate Bench of this Court in the case of ***Pankaj Agrawal and Ors. vs. The State of Bihar & Ors.*** (supra) has held in paragraph nos.16 and 17 as under:-

“16. To establish the offence under Section 420 of the Indian Penal Code, it must be disclosed that at the time of initial transaction, the petitioner had dishonest and fraudulent intention.

17. In the case of Hridaya Ranjan Prasad Verma & Others v. State of Bihar & Others reported in MANU/SC/0223/2000 : 2000(3) P.L.J.R. (SC) 137, the Hon'ble Supreme Court highlighted the importance of intention of the accused at the time of inducement, for attracting the offence of cheating and observed as follows:

“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.”

Again in Uma Shankar Gopalika vs. State of Bihar & Another reported in MANU/SC/1233/2004 : (2005) 10 SCC 336, the Hon’ble Supreme Court held as follows:

“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 no, the same cannot be amount to cheating. In the present case it has nowhere being stated that 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.”



Considering the facts of the case and also the law laid down in the case of *Hridaya Ranjan Prasad & Ors vs. State of Buihar and Others* (supra) and *Uma Shankar Gopalika vs. State of Bihar & Another* (supra), I am of the view that no case of cheating is made out against the petitioners. Further, in the opinion of this Court, the F.I.R. is founded over a civil dispute arises out of the agreement dated 15.02.2011. Therefore, the criminal prosecution of the petitioners is an abuse of the process of the Court.

In view of the aforesaid, this application is allowed. Accordingly, the F.I.R. vide Danapur P.S. Case No. 100 of 2017 dated 21.02.2017 registered for the offences under Sections 406, 420, 341, 323, 379, 504, 506/34 of the Indian Penal Code and all consequential proceeding arising out of the aforesaid F.I.R. including the cognizance order dated 08.01.2018 passed by learned A.C.J.M.-1, Danapur are hereby quashed in the interest of justice.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.04.2023
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