

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39153 of 2019

Arising Out of PS. Case No.-343 Year-2018 Thana- JAGDISHPUR District- Bhagalpur

GAUTAM KUMAR Son of Late Abhay Kumar Yadav Resident of - Nawab
Colony, P.S.- Tilkamanjhi, District - Bhagalpur

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Ravi Prakash Sah @ Pappu Sah Son of Late Shyam Sundar Sah Resident of
Village and P.S. - Jagdishpur, District- Bhagalpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vipin Kumar, Advocate

For the Opposite Party/s : Mr.Humayou Ahmad Khan, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

8 04-05-2023 Heard learned counsel for the petitioner and learned
APP for the State.

2. This application has been filed for quashing of the order dated 26.04.2019 passed by learned Addl. District & Sessions Judge-7th, Bhagalpur in Cr. Revision No. 51 of 2019 in Trial No. 09 of 2019 arising out of Jagdishpur P.S. Case No. 345 of 2018 registered for the offences under Sections 406, 419, 420, 467, 468, 471, 327, 323, 504, 506 of the Indian Penal Code.

3. The prosecution case in brief is that petitioner entered into an agreement with opposite party no. 2 on 15.03.2016 for the piece of land bearing Khata No. 30, Kheshra No. 800, Thana No. 418. As per agreement, the petitioner deposited Rs. 1, 55, 00,000/- (Rupees One Crore Fifty Five Lacs) to opposite party no. 2 and remaining Rs. 12,000/- was to be paid at the time of registry. After depositing the said amount



by the petitioner, the opposite party no. 2 did not execute the sale deed and turned deaf ear on it. Thereafter, petitioner went to the residence of opposite party no. 2 requesting for registry of the said land but the opposite no. 2 along with his wife assaulted the petitioner.

4. It has been submitted by learned counsel for the petitioner that the District Court has considered the case of the accused as if it was holding a mini trial and has proceeded to decide the case but at the stage of cognizance, learned Magistrate found *prima facie* case and the learned Revisional Court ought not to have interfered in the matter by holding a mini trial.

5. It has further been submitted that a judgment of Hon'ble Supreme Court in case of ***Indra Mohan Goswami Vs. State of Uttranchal*** reported in ***2007 12 SSC 1*** is not applicable in the present case as in ***Indra Mohan Goswami (supra)*** case, the party had failed to pay the balance amount despite several requests and here the petitioner/informant has paid the amount after notice and taking the accused in good faith.

6. Learned Counsel for the petitioner has relied upon a judgment of Hon'ble Supreme Court in case of ***Rajesh Bajaj Vs. State of NCT of Delhi & Ors*** reported in ***1999(3) SCC 259***,



and this Court in case of *Sajan Kumar Dalmia Vs. The State of Bihar & Anrs reported in 2005(3) PLJR 441*, *Lal Muni Devi Vs. The State of Bihar & Ors reported in 2001(2) SCC 17* and a co-ordinate Bench of Allahabad High Court in case of *Prabhakar Pandey Vs. The State of U.P. in Cr. Rev. No. 2341 of 2001*.

7. Learned counsel for the respondent has argued that the dispute was predominantly of civil nature and given the colour of criminal dispute only to build pressure upon the opposite party no. 2 herein the civil dispute in which the petitioner herein was not taking any remedial steps. He categorically disputes his liability to execute the sale deed on the ground of unwillingness of the petitioner to pay the consideration money within time.

8. It has further been submitted that informant has filed a Title Suit bearing Title Suit No. 295 of 2020 and the criminal proceedings is not maintainable. From the aforesaid F.I.R, it would be evident that the dispute is predominantly of civil nature and criminal proceedings ought not have been initiated. However, the police submitted charge-sheet and learned Magistrate has taken cognizance against the petitioner.

9. I have heard both the parties and also perused the



materials available on record. It is an admitted position that the opposite party no. 2 after receiving an amount of Rs. 1, 55,00,000/- (Rupees One Crore Fifty Five Lakhs Only) from the petitioner has refused to execute the sale deed though the said amount has been withdrawn and utilized by accused/opposite party no. 2. After investigation, the charge-sheet has been submitted by the police and cognizance has been taken against the petitioner after finding *prima facie* case and the same was challenged in the Court of learned Addl. District & Sessions Judge-7th, Bhagalpur in Cr. Revision No. 51 of 2019 in Trial No. 09 of 2019 which has been allowed by learned Judge vide order dated 26.04.2019.

10. Learned counsel for the petitioner has relied upon a judgment of this Court in case of ***Sajan Kumar Dalmia Vs. The State of Bihar & Anrs (supra)*** in which it is held that the Revisional Court committed error in setting aside the order on the ground that dispute was of civil nature and therefore, the cognizance order was restored.

11. This Court in case of ***Sajan Kumar Dalmia Vs. The State of Bihar & Anrs (supra)*** has held as under:-

“4. In my view, the revisional court has committed error in setting aside the order of cognizance as there is allegation



of dishonest intention on the part of the accused. It is also alleged that he has committed breach of the terms and conditions of the agreement. From the definition of Section 405 of the Penal Code, 1860 it appears that if a person dishonestly misappropriates the property in violation of an agreement which he has made touching the discharge of such trust or willfully suffers any other person so to do, commits criminal breach of trust. There is allegation in the complaint petition that the accused has dishonestly committed the breach of the terms and conditions and misappropriated the amount and did not pay Rs. 31,530/-. At this stage, it cannot be said that no prima facie case is made out.”

12. The Hon’ble Supreme Court in case of **Rajesh Bajaj Vs. State of NCT of Delhi & Ors (supra)** has held that it is not necessary that a complaint should verbatim reproduce in the body of his complaint and all the ingredients of the offence which was alleging. Paragraph no. 9 of the said judgment has held 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 v. Bhajan Lal¹ 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: (SCC p. 379, para 103).”

13. Moreover, the Hon’ble Supreme Court in case of ***R. Kalyani Vs. Janak C. Mehta and Others*** reported in (2009) 1 SCC 516 has held that merely because a civil claim is maintainable does not mean that criminal complaint cannot be



maintained.

14. The Revisional Court i.e. the Sessions Court while exercising the power of revision cannot quash the order taking cognizance and summoning the accused passed by learned Magistrate in revisional jurisdiction. The revisional jurisdiction of the Sessions Court is very limited and the Sessions Court can examine the illegality, irregularity and impropriety of the order passed by learned Magistrate. The Sessions Court has the power to issue direction by pointing out the illegality in the order passed by learned Magistrate and can remit the matter back to the learned Magistrate. By the impugned order, the Additional Judge has set aside the order dated 05.03.2019 and directed for issuing release order in favour of the petitioner who was in custody.

15. The opinion of this Court that the order of the then, Vinay Kumar Mishra, learned Add. Sessions Judge is illegal as he could not have passed an order for release of the accused at the time of setting aside the order.

16. In view of the discussions above, this application is allowed. The impugned order dated 26.04.2019 passed by learned Addl. District & Sessions Judge-7th, Bhagalpur in Cr. Revision No. 51 of 2019 in Trial No. 09 of 2019 arising out of



Jagdishpur P.S. Case No. 345 of 2018 is hereby quashed. The court below is directed to proceed in the criminal case from the stage of cognizance and decide the case expeditiously.

17. With the aforesaid observation and direction, this direction is disposed of.

(Sandeep Kumar, J)

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