IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17933 of 2016

Arising Out of PS. Case No.-6 Year-2005 Thana- RAJAOLI District- Nawada

Arvind Kumar @ Arvind Pandey Executive Director, National Rural and Mountain Tribal Development Association, Son of late Sriram Raji Pandey, resident of Brindawan Colony, P.S. - Phulwarisharif, District - Patna.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

Appearance :
For the Petitioner/s : Mr.Tabish Sharfuddin, Advocate.
For the Opposite Party/s : Mr.Manoj Kumar 1, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 13-09-2023

Heard Mr. Tabish Sharfuddin, learned counsel appearing on behalf of the petitioner and Mr. Manoj Kumar No.1, learned APP for the State.

2. The present quashing application has been filed under Section 482 of the Code of Criminal Procedure against the order dated 01.05.2010 by which learned Judicial Magistrate 1st Class, Patna has taken cognizance against the petitioner under Sections 406, 420, 467, 468 and 120(B) of the Indian Penal Code in Rajauli (Nawada) P.S. Case No. 06 of 2005.

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner was allotted cleaning (*Safai*) of “Aahar” by Zila Gramin Vikash Abhikaran to perform water shade programme under Rajauli Block with

respect to financial year 2001-05. As per the scheme, the petitioner was given a sum of Rs. 13,05,240/- by cheque No. 576180 dated 13.03.2001 (Annexure 4), to perform the work. The petitioner could not complete the work due to escalation of price as a result of inflation, even though, he performed considerable work and after three years, he surrendered Rs.8,05,240/- by cheque no. 000458, C/A No.341 of Magadh Central Cooperative Bank, apportioned for the remaining work (Annexure 6). The work performed by the petitioner has duly been certified and signed by the Assistant Engineer confirming the fact that the amount of Rs.5,00,000/- has been spent by the petitioner for execution of the work which has not been denied and is evident from measurement book (Annexure-7). The petitioner was also granted work satisfaction certificate pursuant to the said measurement book by the concerned department for the work performed by him (Annexure 8). Learned counsel submits that though the petitioner has not followed any terms and conditions of the work order or tender notice issued for the work to be performed by the petitioner, the same could be verified by the records relating to tender notice. In any case, learned counsel submits that the allegation, prima facie, appears to be civil in nature for violation of contract and specific performance of contract. The remedy lies before the competent Civil Court. In these background, learned counsel submits that as the petitioner has already surrendered remaining amount to the government, there is no question of any embezzlement of fund or misappropriation of fund by the petitioner. In such circumstances, considering the nature of allegation levelled against the petitioner, further continuation of criminal proceeding against the petitioner would be vexatious and abuse of the process of the Court.

4. *Per contra,* Mr. Ajit Kumar, learned APP appearing on behalf of the State submits that as the petitioner admits that he was allotted certain work in terms of government scheme amounting to Rs.13,05,240/- which was to be completed within a period of five years, however, the petitioner failed to complete work in terms of the tender notice and prematurely withdrew the execution of work which caused damage to public at large. The allegation levelled against the petitioner is sustainable in the eye of law and the proceeding cannot be quashed at an early stage.

5. Having considered the rival submissions on behalf of the parties as well as having perused the allegation made in the F.I.R. and the measurement book, it appears that the allegation levelled against the petitioner is not sustainable in view of the fact that the petitioner had performed part work

and the same has been acknowledged by the State Government functionary, however, due to price escalation, the petitioner was constrained to do further work and he has admittedly returned the remaining amount of money, which was allotted to him for performance of the work, though at a premature stage.

6. The issue which presents itself for determination in these proceedings is whether the ingredients of the offence of Sections 406, 420, 467, 468 and 120(B) of IPC have been made out on the face of the FIR.

7. The FIR filed on 07.01.2005 by the Assistant Project Officer, District Rural Development Agency, Nawada (Annexure 2) contains a narration about how a committee was constituted to investigate the discrepancies in the execution of Watershed Programme by the Narmada (National Rural and Mountain Tribal Development Association), as appointed by Zila Gramin Vikash Abhikaran, Nawada as the project implementing agency in Rajauli block. As alleged in the FIR, the organization was found to have connived with the then Assistant Engineer, Zila Gramin Vikash Abhikaran, Nawada, to commit irregularities and misuse of government funds.

8. The ingredients to constitute the offence under criminal breach of trust as provided under Section 405 IPC are as follows:

> *"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or 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."*

9. The offense of criminal breach of trust contains two ingredients: (I) entrusting any person with property, or with any dominion over property; and (ii) the person entrusted dishonestly misappropriates or converts to his own use that property to the detriment of the person who entrusted it.

10. The Hon'ble Apex Court in ***S.W. Palanitkar v. State of Bihar*****, (2002) 1 SCC 241** held as under:

> ***"8.*** *Before examining respective contentions on their relative merits, we think it is appropriate to notice the legal position. Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well."*

11. In ***Anwar Chand Sab Nanadikar v. State of Karnataka*****, (2003) 10 SCC 521** a two-judge bench restated the essential ingredients of the offence of criminal breach of trust in the following words in Paragraph no.7 :

> ***"7.** The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime*."

12. None of the ingredients of the offence of criminal breach of trust can be inferred from allegations made in the FIR as they stand. An alleged breach of contractual terms does not *ipso facto* constitute the offence of the criminal breach of trust without there being a clear case of entrustment.

13. Section 420 IPC defines cheating and dishonestly inducing delivery of property which reads as under-

> *"Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

14. Section 420 IPC is a serious form of cheating that includes inducement in terms of delivery of property as well as valuable securities.

15. The Hon'ble Supreme Court in ***Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168,*** held in Paragraph No.15 that:

> *" **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."*

16. The Apex Court in the case of ***R.K. Vijayasarathy v. Sudha Seetharam, (2019) 16 SCC 739,*** has held as follows in Paragraph no.19 :

> *" **19.** The ingredients to constitute an offence under Section 420 are as follows:*
>
> ***1.** A person must commit the offence of cheating under Section 415; and*
>
> ***2.** The person cheated must be dishonestly induced to*
> *(a) deliver property to any person; or*
>
> *(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.*

Cheating is an essential ingredient for an act to constitute an offence under Section 420."

17. Section 120 A of IPC defines the offence of criminal conspiracy as criminal conspiracy as follows:

> *" **120A. Definition of criminal conspiracy.**-- When two or more persons agree to do, or cause to be done,*
> *(1) an illegal act, or*
> *(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*
>
> *Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.*
>
> *Explanation.It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.]* "

18. In ***Tanviben Pankajkumar Divetia v. State of Gujarat*, (1997) 7 SCC 156,** the Apex Court has cautioned on proceeding on mere suspicion in following words in paragraph no.45:

> ***"45.** The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various*

circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. (Jaharlal Das v. State of Orissa [(1991) 3 SCC 27 : 1991 SCC (Cri) 527])"

19. In the decision of ***State of Kerala v. P. Sugathan*****, (2000) 8 SCC 203,** the Apex Court noted in paragraph no.12 that an agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation:

"12. ...As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the

> *prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy...*
>
> *13. ...The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient…"*

20. The Apex Court in ***Ram Narayan Popli v. CBI, (2003) 3 SCC 641,*** has held in Paragraph No. 354 as follows:

> *"354. ...For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient…"*

21. In view of the clear enunciation of law laid down by the Apex Court, it can be said that there is not

sufficient evidence, whatsoever, to satisfy this Court that there was prior meeting of minds between the petitioner's organization and Assistant Engineer, as alleged in the FIR dated 07.01.2005(Annexure 2). The work of the petitioner was supervised and measured by Assistant Engineer, Zila Gramin Vikash Abhikaran, Nawada (Annexure 7). Even the Auditor of the Zila Gramin Vikash Abhikaran, Nawada had also certified the measurement and bill of the petitioner's organization (Annexure 8). The SDO Nawada had also inspected the project work of petitioner's organization and submitted an enquiry report wherein it was stated that the 8 sites on which work was done by petitioner was also found to have done in part. (Annexure 9). Therefore, merely on the basis of approval granted by Assistant Engineer, Zila Gramin Vikash Abhikaran, Nawada, it cannot be presumed, in want of substantial circumstantial evidence completing the chain of events to suggest that there exists prior agreement between the parties for hatching the alleged conspiracy. In absence of cogent and credible evidence, grant of approval cannot *prima facie* be presumed to be an act executed as part of a conspiracy between the parties.

22. The Hon'ble Supreme Court in the case of **Indian Oil Corporation Vs. NEPC India Ltd. and Others**

reported in **(2006) 6 SCC 736** has laid down the principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal procedure to quash complaint and criminal proceedings which are relevant for the present purpose. Paragraph Nos. 12 and 13 are reproduced hereinafter:

> "**12.** The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—*Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , *State of Haryana* v. *Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , *Central Bureau of Investigation* v. *Duncans Agro Industries Ltd.* [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , *State of Bihar* v. *Rajendra Agrawalla* [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , *Rajesh Bajaj* v. *State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , *Hridaya Ranjan Prasad Verma* v. *State of Bihar* [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , *M. Krishnan* v. *Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:
>
> (*i*) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.
>
> For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(*ii*) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(*iii*) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(*iv*) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(*v*) A given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

"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 breakdown 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* v. *State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)
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> > "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."

23. The entire origin of the dispute emanates from the decision taken in Twenty Point Programme meeting, pursuant to which the executive Engineer, Minor Irrigation Division, Nawada investigated the work done by petitioner's organization. Thereafter, a committee was formed which investigated the alleged irregularities. As against a total amount of Rs.4,28,627/- of measurement books submitted by the

petitioner's organization, work amounting to Rs.49894/- was found to be completed. It is specifically alleged in the FIR dated 07.01.2005 (Annexure 2) that the then Assistant Engineer, Zila Gramin Vikash Abhikaran, Rajauli certified the work of incompetent persons in the measurement book of total 8 schemes. There is no allegation of connivance between the petitioner's organization and the then Assistant Engineer, Zila Gramin Vikash Abhikaran, Rajauli for misusing Government funds amounting to the tune of Rs. 4,28,627/-. As for the petitioner, the specific allegation against him as per the FIR dated 24.06.2011 (Annexure 3) is that he was given Rs.13,05,240/- for completion of cleaning (*Safai*) of "Aahar" by Zila Gramin Vikash Abhikaran to perform water shade programme under Rajauli Block with respect to financial year 2001-05. It is alleged in the FIR that the work allotted was not completed and also utilization certification was also not submitted. However, on perusal of letter dated 06.10.2023 (Annexure 6), it is evident that the petitioner had returned the advance amount of Rs.8,05,240/- out of Rs.13,05,240/- advanced to the Programme Director, Zila Gramin Vikash Abhikaran.

24. From the abovementioned facts, the intention to cause wrongful loss to the Government from the very

beginning of entering into a contract under the Watershed Programme seems to be absent. Nothing substantial has been brought on record to establish beyond any reasonable doubt the presence of conspiracy between the petitioner's organization and the then Assistant Engineer, Zila Gramin Vikash Abhikaran, Rajauli (Nawada). Mere speculation based on circumstantial evidence with regard to the conduct of the parties is not sufficient to establish the element of conspiracy between the parties. The circumstances so relied upon must form a chain of events from which the only conclusion of guilt of the accused persons can be inferred. At the same time, in order to attract the ingredients of Sections 406 and 420 IPC, it is imperative on the part of the complainant to *prima facie* establish that there was an intention on the part of the petitioner to cheat or defraud the complainant right from inception. In the present case, the petitioner had in fact returned the advanced amount of Rs.8,05,240/- out of Rs.13,05,240/- advanced to the Programme Director, Zila Gramin Vikash Abhikaran, which goes to show that had the petitioner's intention from the very beginning was to defraud, his subsequent act of returning the advanced amount would not suggest otherwise. Furthermore, it must also be established that the alleged act of cheating caused wrongful loss to complainant and wrongful gain to the accused.

There is nothing on record in the facts of the case to prove this point.

25. Having gone through the FIRs and the charges levelled against the petitioner, it cannot be said that the allegation made in the FIR constitute an offence punsihable under Sections 406, 420, 467, 468 and 120(B) of the Indian Penal Code. In the instant case, there is no material to indicate that Petitioner had *mala fide* intention to commit loss to the State.

26. In the case of **Vijay Kumar Ghai v. State of W.B., (2022) 7 SCC 124,** the Hon'ble Supreme Court has held as under in paragraph 28:

> ***"28.*** *"Entrustment" of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, "in any manner entrusted with property". So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of "trust". A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code"*

27. In light of the principles laid down by the Hon'ble Supreme Court hereinabove, I am of the opinion that for any violation of the terms and conditions of the agreement / tender notice and for specific performance of contract which is

purely civil in nature, the petitioner cannot be allowed to face rigors of criminal proceeding.

28. In the facts and circumstances of the case, continuation of further criminal proceeding appears to be vexatious and accordingly the order taking cognizance dated 01.05.2010 and entire criminal proceeding initiated against the petitioner stands quashed.

29. The quashing application stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	21.09.2023
Transmission Date	N.A.