IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.2523 of 2018

Arising Out of PS. Case No.-272 Year-2018 Thana- PATLIPUTRA District- Patna

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1. Shailendra Prakash Sinha Aged about 68 years, son of late Chandradeo Prakash Sinha @ Late Hari Babu
2. Mr. Neenu Sinha @ Mr. Mukta Sinha Aged about 65 years, wife of Shailendra Prakash Sinha
3. Siddharth Prakash Sinha @ Sidhar Jha Sinha Aged about 43 years, son of Shailendra Prakash Sinha All are residing at Arrah Garden's Residences,Villa Zone Building No.i, Flat Nop.121,Rukanbpura,Bailey Road,P.S.-Rupaspur,Distt.Patna-800014
4. Aditya Prakash Sinha, Aged about 48 years, son of late Satyadeva Prakash Sinha, Resident of Arrah Garden's Residences,Villa Zone Building No.i, Flat No.144 Rukanpura,Bailey Road,P.S.-Rupaspur,Ditt.-Patna-800014

... ... Petitioner/s

Versus

1. The State Of Bihar, Through Secretary, Home Department
2. Sri Sudhansu Sinha, Son of Late Laxmikant Sinha, Resident of Sita Sadan,Mainpura,P.S.-Patliputra,Town and Distt.-Patna

... ... Respondent/s

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with

Criminal Writ Jurisdiction Case No. 2167 of 2018

Arising Out of PS. Case No.-272 Year-2018 Thana- PATLIPUTRA District- Patna

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1. Mahendra Pratap Singh Son of Late Sarju Prasad Singh, residing at 13 Harihar Apartment, East Boring Canal Road, Patna- 800001.
2. Simon Surendra Lall, Son of Late George Anil Kumar Lall, residing at 506, Emarat Firdouse Apartment, Exhibition Road, Patna- 800001.
3. Ajay Kumar Srivastava, Son of Late Chandrama Prasad Srivastava, residing at Plot No. 3, Kamla Niwas, Allahabad Bank Employees Colony, Maurya Path, Khajpura, Bailey Road, Patna- 800014.
4. Devashish Purkayastha, Son of Late Gopika Ranjan Purkayastha, Residing at Flat NO. 304, Kaushalya Apartment, Mithapur, Khagaul Road, Mithapur, G.P.O. Patna- 800001.

... ... Petitioner/s

Versus

1. The State Of Bihar, Through Secretary, Home Department
2. Sri Sudhansu Sinha, Son of Late Laxmikant Sinha, resident of Sita Sadan, Mainpura, P.S.- Patliputra, Town and District- Patna.

... ... Respondent/s

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Appearance :
(In Criminal Writ Jurisdiction Case No. 2523 of 2018)

For the Petitioner/s	:	Mr. Umesh Prasad Singh, Sr. Advocate Mr.Rakesh Kumar Mr. Vaibhava Veer Shanker
For the Informant	:	Mr. Abhinav Srivastava
For the Respondent/s	:	Mr.Sheo Shankar Prasad Sc-8

(In Criminal Writ Jurisdiction Case No. 2167 of 2018)

For the Petitioner/s	:	Mr. Umesh Prasad Singh, Sr. Advocate Mr.Rakesh Kumar Mr. Vaibhava Veer Shanker Mr.Abhimanyu Vatsa
For the Informant	:	Mr. Abhinav Srivastava
For the Respondent/s	:	Mr.Md. Nadim Seraj, GP-5

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 08-05-2023

Heard the parties.

2. The present writ applications have been filed for quashing the F.I.R. of Patliputra P.S. Case No. 272/2018 registered for the offences punishable under Sections 420/120B/34 of the Indian Penal Code.

3. Petitioner no. 1 (Shailendra Prakash Sinha) is running a Shell Company under the name and style of M/s Sintra Limited through his confident namely Simon Surendra Lal, Mahendra Pratap Singh and Ajay Srivastava (correct name is Ajay Kumar Srivastava), the three Directors of the said company, Devasish Purukayastha who is Senior General Manager (Secretarial & Legal), Neenu Sinha, wife of Shailendra Prakash Sinha (petitioner no. 2); Siddharth Sinha, son of Shailendra Prakash Sinha (petitioner no. 3); and Aditya Prakash

Sinha, son of Late Satyadeva Prakash Sinha (petitioner no. 4). In September, 2006, as directed by Shailendra Prakash Sinha, the Director Simon Surendra Lal and Mahendra Prasad (correct name is Mahendra Pratap Singh) came at the residence of the informant and expressed to the informant that the company M/s Sintra Limited has got its land at Tilta, Plot no. 43, Khewat no. 02, Khata no. 03, thana no. 94 measuring 3.2 acres. They desired that mutation as also for settlement of the local disputes and correction of Survey entry in respect of the land be settled through a Company M/s Sai Constructions and thereafter for purpose of construction of Multi-storied Residential-cum-Commercial Complex and for that he was requested to meet in the Maurya Centre Office. The next day, the informant met Shailendra Prakash Sinha and in course of discussions he was informed for settlement of illegal survey entry as also to remove the construction and 'idol' and to do all necessary act and thing for mutation of name as also for physical possession and for measurement and to erect fencing wall. Accordingly, as on 11th October, 2006, the Director Simon Surendra Lal was authorized for all these work. It is further alleged that on 11th October, 2006 as per direction of Shailendra Prakash Sinha on the basis of determination of the value of the land at six monthly rest in accordance with the resolution of the company dated 4th October, 2006 the Director Simon Surendra Lal executed an Agreement in favour of M/s Sai Constructions, partnership firm. According to the terms of the agreement for correction of the wrong entry in course of survey as also for mutation and other work the company of the accused persons was likely to spend Rs.10-12 Lacs. On 18th October, 2006, the owner as also the directors of the company in lieu of Rs.10-12 Lacs to be provided for expenses, as security, a Bank Guarantee was executed by the informant valid for a period of six months; as the work could not be done, the same was extended for a further period of six months till May. In May, 2010, the real owner of Sintra Limited Shailendra Prakash Sinha as also the then authorized Director Simon Surendra Lal and other Directors Mahendra Pratap Singh and Ajay Kumar Srivastava in a joint meeting took a decision that Sudhansu Sinha (informant) was ready to purchase the aforesaid land for Rs.30.00 Lacs. On 22nd May, 2010, the informant paid Rs.30.00 Lacs in cash to the owner of Sintra Limited Shailendra Prakash Sinha and those three Directors of the company jointly. On 22nd May, 2010 the Directors of M/s Sintra Limited, Simon Surendra Lal as per direction of Shailendra Prakash Sinha, executed a General Power of

Attorney for disposal of the aforesaid land. On 17.6.2010 after completion of the period of Bank Guarantee, the accused persons returned the said Bank Guarantee and executed a Sale Letter after accepting Rs.30.00 Lacs. The Chartered Accountant Ms. Nevidita of M/s Sintra Limited raised certain objection that the sale consideration of Rs.30.00 Lacs is on much lower side and the said amount cannot be reflected in the accounts of the company. All the accused persons jointly asked to pay Rs.5.00 Lacs more through Bank. On 9.2.2011, a sum of Rs.5.00 Lacs was paid through RTGS from the account of Smt. Sunita Sinha who is wife of the informant. On 10.2.2011, all the accused persons executed a Sale Letter on the Letter-head of M/s Sintra Limited and also handed over all the original documents / Deeds. The informant has claimed that on the basis of aforesaid sale letter, he got ownership of the land in question. In October, 2015, one Kamal Bhushan showed his willingness to purchase the entire land for a total consideration amount of Rs.3.31 Crores and the informant accepted Rs.50.00 Lacs from said Kamal Bhushan on 4.11.2015 and entered into an Agreement with him. The period of the said agreement was only one year and there was one stipulation in the said agreement that, if required, the said period may be extended for a maximum period of one year on payment of additional amount of Rs.40.00 Lacs. The informant has further alleged that in spite of his request for two long years, said Kamal Bhushan neither paid the balance consideration amount nor requested for any extension of time as mentioned in the Agreement. On 28.12.2017, in order to grab the sum of Rs.3.66 Crores, said Kamal Bhushan in connivance with the owner of M/s Sintra Limited and its Director and other managerial personnel, sent a legal notice making false statements to the effect that said Kamal Bhushan is ready to pay the balance consideration amount, however, the informant is not ready to execute the sale deed in his favour. A copy of the said legal notice was sent to M/s Sintra Limited and its authorized Director Simon Surendra Lal. On 16.3.2018, a meeting of the Board of Directors of M/s Sintra Limited was held and Devasish Purukayastha was authorized by the company to cancel the power of attorney dated 22.5.2010 executed in favour of the informant. On 21.3.2018, without any prior information and reason shown to the informant, the Power of Attorney was cancelled. The informant has further alleged that on 24.4.2018, the informant alongwith the purchaser Smt. Sunita Sinha visited the District Sub-Registrar Office, Ranchi, to execute the registered Sale Deed in her favour, however, on the ground of link failure, the office of the District Sub-Registrar, Ranchi refused to register the document. On 25.4.2018, the informant again visited the District Sub-Registrar Office and he found that the Sale Deed is being registered by Devasish Purukayastha in favour of Kamal Bhushan. The informant raised his objection which was not considered by the District Sub-Registrar. The informant also produced all the original documents on which he was told by the District Sub-Registrar, Ranchi that a Sanaha has been registered stating that the original documents have been lost. On 25.4.2018, Devasish Purukayastha on the instruction of the owner of the company namely Shailendra Prakash Sinha registered the Sale Deed in respect of the land of which an Agreement to Sell was executed in favour of the informant and the original documents were also handed over to the informant. On 2.5.2018, the informant is said to have made an application before the District Sub-Registrar, Ranchi, with all documentary evidences to cancel the Sale Deed No. 3412/3088 dated 25.4.2018, however, no action has been taken by the District Sub-Registrar on the said application of the informant.

4. Learned Senior Counsel for the petitioners submits that the petitioners state that as alleged by the informant that the accused persons have misappropriated a sum of Rs.3.66 crores

and thereby caused wrongful loss to the informant, but no money was ever given to these petitioners nor any proof thereof has been mentioned or enclosed with the First Information Report although he has alleged that Rs.30,00,000/- (Rupees Thirty Lacs) was paid in cash to the owner of M/s Sintra Ltd., and the three directors. Whatever amount was paid by the informant, it was paid to the company and that fact only can be accepted or denied by the officers of the company and not by the petitioners.

5. Learned Senior Counsel for the petitioners submits that the petitioners are innocent and have been falsely implicated in the present case. All the four petitioners are related to each other. There is no allegation whatsoever against the petitioner nos. 2 to 4 in the entire First Information Report, still they have been made accused in the present case. The instant First Information Report has been lodged with *malafide* intention only to harass the petitioners.

6. The alleged transaction was between the company M/s Sintra Limited and the informant, but the company has not been made accused in the First Information Report. The company has a distinct and separate entity from its shareholders / directors / managerial personnel. The company is itself the owner although

the petitioner no. 1 has been repeatedly identified as the owner of the company in the First Information Report. The allegations made by the informant against the petitioner no. 1 is apparently illegal, false and malicious. The dispute between the company M/s Sintra Limited and the informant is pure and simple a civil dispute having no iota of criminality. The First Information Report has been lodged with *malafide* intention only to harass the petitioners and to put them under undue pressure. The petitioner no. 1 made an enquiry from Simon Surendra Lal the Director of the company and has come to know that the instant First Information Report is a counter blast to the F.I.R. being Gandhi Maidan P.S. Case No. 193/2018 lodged by one D. Purukayastha, Senior General Manager, Company Secretarial & Legal of M/s Sintra Limited. The F.I.R. has been registered on 19.5.2018 u/s 420 / 406 / 506 I.P.C. It has been alleged that M/s Sintra Limited is the owner of the land having an area of 328 decimals situate at Tilta, Ranchi. The said land was purchased by the company from Late Meena Verma, wife of Late Ajay Kumar Shyam Verma vide registered Sale Deed No. 9788 dated 18.10.1976, since then the company is in possession of the said land. In the Board meeting of the company held on 4.10.2006, a decision was taken to dispose of the said land and the Director of the company namely Simon Surendra Lal was authorized for the said purpose. Sri Sudhansu Sinha came to the office of the company and showed his interest in sale/purchase of the said land. On 22.5.2010, the company executed a registered Power of Attorney in his favour to enable him to take necessary steps for disposal of the land abovementioned. On 4.2.2011, Sri Sudhansu Sinha deposited a sum of Rs.5.00 Lacs through cheque on account of advance for sale of Ranchi land and in acknowledgment of the said deposit, the company issued Receipt No. 749 dated 4.2.2011. Thereafter no information was received from Sudhansu Sinha nor he could be contacted by the company. After a lapse of substantial time, on 3.1.2018, the company received a legal notice dated 3.1.2018 sent on behalf of one Kamal Bhushan wherein it was alleged that the Power of Attorney holder of the company namely Sudhansu Sinha has accepted Rs.50.00 lacs out of the total consideration amount of Rs.3.31 Crores, however, Sri Sudhansu Sinha was not ready to execute the Sale Deed. By the said legal notice, the company was asked to accept the balance consideration amount and execute the Sale Deed within 15 days. Sri Sudhansu Sinha never disclosed this fact to the company nor paid Rs.50.00 Lacs received by him from Kamal Bhushan as part consideration amount. The said legal notice was replied by the company vide letter dated 15.2.2018 and Sri Kamal Bhushan was requested to come to Patna and give the detailed information. Seeing the wrongful conduct of Sri Sudhansu Sinha, the company cancelled the registered Power of Attorney dated 22.5.2010 by executing a Deed of Revocation of General Power of Attorney as on 23.3.2018 and the same was registered with the District Sub-Registrar Office, Patna. The company executed another Power of Attorney dated 6.4.2018 in favour of Sri D. Purukayastha and authorized him to take all necessary steps for execution of Sale Deed in respect of the land of the company at Ranchi. In pursuance of the said Power of Attorney, D. Purukayastha executed a Sale Deed and registered the same in the office of the District Sub-Registrar Office, Ranchi bearing Sale Deed No. 3412/3088 dated 25.4.2018. It has been further stated in the F.I.R. that on the date when the Deed was presented by the company in the District Sub-Registrar Office, Ranchi, the informant came there and threatened the representative of the company. Sri Sudhansu Sinha also threatened the representative of the company at Patna and pressurized him to cancel the Sale Deed. According to the F.I.R., Sudhansu Sinha accepted Rs.50.00 Lacs on behalf of the company as part consideration amount of the land, however, he did not disclose the same to the company nor paid the said amount to the company and in this way he has grabbed Rs.50.00 Lacs of the company and at the time of execution of the Sale Deed by the company in favour of Kamal Bhushan, the company was compelled to adjust the said sum of Rs.50.00 Lacs out of the total consideration amount of Rs.3.31 Crores. Even if the allegations made in the F.I.R. are taken on the face value of it, no criminal offence is made out as against the petitioners. There is nothing to show that Rs.30.00 Lacs was paid by the informant in cash to the petitioner no. 1 although as per Income Tax Act Rs.50,000/- or more cannot be paid in cash. The informant is also not able to show any connection of the petitioners with the alleged transaction with the company in respect of the land at Ranchi. The F.I.R. has been lodged on the basis of misconceived and misleading allegations which are completely baseless. The informant in the First Information Report has nowhere stated that the General Power of Attorney dated 22.5.2010 is an irrevocable Power of Attorney. In that view of the matter, the statements made by the informant in the last paragraph at page 6 of the F.I.R. has got no relevance. No prior information or cause was required to be shown to the informant before cancelling the General Power of

Attorney given by the company to him, a principal has every right to release an agent, that too who is not acting honestly, cancellation of Power of Attorney is not an offence. The informant has also not produced any Agreement to Sale which was allegedly executed by the company in his favour. The balance consideration amount of Rs.2,11,48,800/- has been paid by the purchaser namely Kamal Bhushan through RTGS dated 23.4.2018 directly in the Bank account of the company M/s Sintra Limited. No offence u/s 420 I.P.C. is made out against any of the petitioners. There is no allegation that the petitioners ever made false inducement to the informant nor there is any allegation that by the alleged act of cheating, the petitioners have been benefited and the informant suffered loss. The consideration amount has been deposited in the account of the company, however, the company namely M/s Sintra Limited is not an accused. The petitioners state that from the conduct and behavior of the informant it is itself clear that he tried to usurp the land of the company instead of finding a buyer agreeable to buy the land at the market price, rather from the facts alleged in the First Information Report, it is apparent that the land which was sold for Rs.3.66 crores, the informant wanted to have the same for Rs.30.00 Lacs only even if the fact alleged is accepted, but that itself is a proof that instead of acting like an honest power of Attorney holder, the informant acted dishonestly against the company, however, this is an issue to be settled between the company and the informant and the petitioners have no concern. There is no personal allegation against the petitioners. Learned counsel for the petitioners further submits that no vicarious liability can be passed/imposed upon the petitioners in view of the law laid down by the Supreme Court in the case of ***R. Kalyani Vs. Janak C Mehta*** reported in ***(2009) 1 SCC 516.***

7. Learned Senior Counsel for the petitioners has relied upon the judgment of the Supreme Court in the case of ***Inder Mohan Goswami & Another Vs. State of Uttaranchal & Ors.*** reported in ***(2007) 12 SCC 1***, ***R.P. Kapur Vs. State of Punjab*** reported in ***AIR 1960 SC 866, State of Haryana Vs. Bhajan lal*** reported in ***AIR 1992 SC 604, All Cargo Movers India (P) Ltd. & Ors Vs. Dhanesh Badarmal Jain & Anr. reported in (2007) 14 SCC 776.***

8. Learned counsel for the Opposite Party No. 2 submits that from reading the F.I.R., a clear case of Section 420 of the Indian Penal Code is made out and the F.I.R. cannot be quashed at the initial stage in view of the law laid down by the Supreme

Court in the case of ***State of Bihar Vs. P.P. Sharma*** reported in ***1992 Supp (1) SCC 222*** on the basis of affidavit. He relied upon the recent judgment of the Supreme Court in the case of ***Neeharika Infrastructure (P) Ltd. Vs State of Maharashtra*** reported in ***2021 SCC Online SC 315*** and ***State of Uttar Pradesh Vs Akhil Sharda*** reported in ***2022 SCC Online SC 820*** and has also submitted that the power of quashing should be exercised rarely at the stage of F.I.R. and it can only be exercised if offence is not made out from reading of the entire F.I.R.

9. I have considered the submissions of the parties.

10. Section 415 of the I.P.C. and Section 420 I.P.C read as follows:

> "**415.** *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.*
>
> a. *(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.*
> b. *(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the*

article. A cheats.

c. *(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thus, dishonestly induces Z to buy and pay for the article. A cheats.*
d. *(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thus dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.*
e. *(e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thus dishonestly induces Z to lend money. A cheats.*
f. *(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thus dishonestly induces Z to lend him money. A not intending to repay it. A cheats.*
g. *(g) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thus dishonestly induces Z to pay money. A cheats*

420. *Cheating and dishonestly inducing delivery of property. —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.*

11. I have considered the submissions of both the parties.

12. From the reading of the definition of cheating, it will appear that the intention of the accused right from very beginning to cheat should be there.

13. In the case of ***Murari Lal Gupta Vs. Gopi Singh*** reported in ***(2005) 13 SCC 699,*** the Hon'ble Supreme Court in

Paragraph No. 6 has held as follows

> *"6. We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having taken into consideration all the material made available on record by the parties and after hearing the learned counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent."*

14. In my opinion, no case of cheating as alleged in the present case is made out as from the reading of the F.I.R., it appears to be a pure case of civil dispute arising out of an agreement.

15. Moreover, the Company has not been made accused in the present case and the petitioners cannot be held vicariously liable for the offences alleged to have been committed by the Company in view of the law laid down by the Supreme Court in the case of ***R. Kalyani vs. Janak C. Mehta (supra)***.

16. The submission of learned Senior Counsel for the petitioner on territorial jurisdiction is not being considered by this Court at this stage because this case is being allowed as no offence is made out from reading of the entire F.I.R. under Section 420 of the Indian Penal Code.

17. The opposite party need no permission from this Court to pursue any other remedy as permissible in law.

18. In view of the above, the F.I.R. i.e. Patliputra P.S. Case No. 272/2018 registered for the offences punishable under Sections 420/120B/34 of the Indian Penal Code is hereby quashed against the petitioners only.

(Sandeep Kumar, J)

Saif/-

AFR/NAFR	NAFR
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