

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7665 of 2016

Arising Out of PS. Case No.-305 Year-2013 Thana- KADAMKUAN District- Patna

Amrendra Kumar Sinha @ Amarendra Kumar Sinha, Prop. M/s. Shreya Construction, Son of Late Sibeshwar Prasad Sinha, resident of Khazanchi Road, P.S.- Pirbahore, District- Patna, Pin Code- 800004.

... .. Petitioner

Versus

1. The State of Bihar
2. Sri Pankaj Kumar, Son of Late Kedar Nath Prasad, C/o Smt. Indu Kumar Sinha, Road No.1, Rajendra Nagar, Near Anirudh Gas Seva, P.S.- Kadamkuan, District- Patna, Pin Code- 800016.

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Anirban Kundu, Advocate

For the Opposite Party/s : Mr. Raj Ballabh Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 22-04-2024

Heard learned counsel for the petitioner and
learned APP for the State.

2. The present application has been filed for
quashing the order dated 06.08.2015 passed by learned
Judicial Magistrate-1st Class, Patna in G.R. No.4807 of 2013
arising out of Kadam Kuan P.S. Case No.305 of 2013
whereby the learned Jurisdictional Magistrate took



cognizance of the offences punishable under Sections 406 and 420 of the Indian Penal Code (for short 'IPC') against the petitioner and issued summon against him.

3. The prosecution case is based upon the complaint filed by opposite party no.2, namely, Sri Pankaj Kumar in the court of learned Chief Judicial Magistrate, Patna on 23.07.2013 vide Complaint Case No.2523(C) of 2013 stating therein that complainant/opposite party no.2 and his four brothers have a plot of land at Rajendra Nagar, Road No.8-B, Patna bearing Plot No.67B, Block No.-B, Circle No.29-A consisting an area of 585.12 Sq.yards. The complainant further alleged that for the purpose of construction of multi-storied building (Apartment), a development agreement was executed, which was signed by him and his brothers as well as by the petitioner (a builder). In the said development agreement, it was agreed that the petitioner shall complete the construction within 18 months after sanction of plan by competent authorities and in case of failure, further time of six months will be extended to finish the entire construction work. The complainant/O.P. No.2



further alleged that in the agreement, it was also agreed that if the petitioner fails to complete the construction work within further six months i.e. a total period of 24 months, the petitioner shall be liable to pay Rs.30,000/- only per month as damage to opposite party no.2 and his brothers, who are the owner of the land. It is further alleged that time of 12 months only be extended, if required, where petitioner agreed that agreed work will be come to an end after the expiry of the extended period of 12 months with damage i.e. after expiry of total 36 months. It is further alleged that after completion of 18 months, the petitioner did not complete the construction work till 30.05.2012 and as such, the petitioner violated the terms and conditions of development agreement. Thereafter, at the request of petitioner, further time of six months' was extended to complete the construction work but, the petitioner failed again to complete the construction work. It is further alleged in the complaint that a legal notice was sent by opposite party no.2 to the petitioner, which was replied by the petitioner with a request to grant 12 months' further time to



complete the construction work and an undertaking was given by the petitioner to pay a penalty of Rs.30,000/- per month for damage to opposite party no.2 till date of finishing of the construction and handing over of possession to the landlord. It is further alleged that in terms of agreement, the petitioner, being a builder, had to pay the rental amount of Rs.6,000/- per month since the date of taking possession of the land and demolition of the building to the date of handing over and taking possession of the share of O.P. No.2 in the multi-storied building. It is further alleged that the petitioner neither completed the construction work within the stipulated time nor paid rental amount to the landlord nor paid penalty amount for damage and thereby misappropriated a total amount of Rs.3,84,000/-. Further, the petitioner did not pay Rs.5,00,000/- after approval of map and/or before demolition of old structure, which is the violation of terms and conditions of development agreement. Lastly, it is alleged that petitioner has committed an offence of cheating and criminal breach of trust with the complainant/opposite party no.2.



4. The complaint was forwarded to the police under Section 156(3) of the Code of Criminal Procedure (for short 'CrPC') to register an FIR and, accordingly, Kadam Kuan P.S. Case No.305 of 2013 under Sections 406 and 420 of the IPC was registered against the petitioner.

5. It is submitted by learned counsel that the flats were handed over to opposite party no.2 including other claimants, who are brother of opposite party no.2. In support of his submission, learned counsel has referred to Annexures-3/2, 3/3,3/4,3/5 and 3/6 of this petition. It is pointed that the provision of delay was the part of agreement and as delay was caused due to obtaining permission from different concerned authorities, the project in issue was delayed for few months. It is submitted that merely as some penalty provision as agreed between the parties through registered development agreement dated 16.08.2008, the present false case was lodged for the offence punishable under Sections 406 and 420 of the IPC. It is submitted that the narration of complaint and the factual background of allegation, nowhere supports the



prima facie case against the petitioner for the offence alleged under Sections 406 and 420 of IPC and, as such, this case is fit to be quashed and set aside. In support of his submission, learned counsel relied upon the legal reports of Hon'ble Supreme Court as passed in the matter of **State of Haryana v. Bhajan Lal, [1992 Supp (1) SCC 335]** and in case of **Usha Chakraborty and Anr. vs. State of West Bengal and Anr. [(2023) SCC OnLine Sc 90]**.

6. Despite of valid service of notice, no one turned up on behalf of opposite party no.2.

7. Learned APP while opposing the application submitted that the agreement was not acted upon by petitioner in its true spirit and, as such, the petitioner has not followed the penalty provision intentionally causing huge financial loss to opposite party no.2.

8. It would be apposite to reproduce para-102 of the legal report of Hon'ble Supreme Court decided in the matter of **Bhajan Lal case (supra)**, which runs as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions



relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against



the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."



9. It would further be apposite to reproduce para-6 of the legal report of Hon'ble Supreme Court as passed in the matter of **Usha Chakraborty Case (supra)**, which runs as under:-

"6. In *Paramjeet Batra v. State of Uttarakhand*, [(2013) 11 SCC 673], this Court held:—

"12. While exercising its jurisdiction under Section 482 of the Code of the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

10. In view of aforesaid factual and legal submissions, it appears that opposite party no.2 along with



his brothers entered into a registered agreement with petitioner for development of building/house at Plot No.67B. It appears that after construction, the said flats (owner share) were also handed over to opposite party no.2 and his brothers through Annexure-3 series. It appears that the complaint was lodged merely for the reason that some financial loss caused to opposite party no.2 due to certain delay in project out of different legal formalities, which were required to start the construction work, which was covered by penalty provision.

11. Accordingly, as narration of complaint is not supporting any *prima facie* offences under Sections 406 and 420 of the IPC against the petitioner, therefore, by taking shelter of guideline nos. (1), (5) and (7) of **Bhajan Lal case (supra)** and by taking guiding note of **Usha Chakraborty case (supra)**, the impugned order dated 06.08.2015 passed by learned Judicial Magistrate-1st Class, Patna in G.R. No.4807 of 2013 arising out of Kadam Kuan P.S. Case No.305 of 2013 *qua* petitioners with all its consequential proceedings are, hereby, quashed and set



aside.

12. The application stands allowed.

13. Let a copy of the judgment be communicated
to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2024
Transmission Date	25.04.2024

