

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41835 of 2022

Arising Out of PS. Case No.-512 Year-2021 Thana- RUNISAIDPUR District- Sitamarhi

NAMONATH PRASAD @ NAMORAI PRASAD Son of Kishori Prasad
Yadav Resident of Village - Sugridih, P.s.- Mahindwara, Distt.- Sitamarhi.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Om Bharti S/O Deo Narayan Rai R/O Village- Runni Saidpur, P.S.-
Runnisaidpur, District- Sitamarhi

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. Rajiv Kumar, Advocate
For the State	:	Mr. Satyendra Prasad, APP
For Opposite Party No.2	:	Mr. Uday Prakash Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5 06-03-2024 Heard learned counsel for the petitioner, learned
A.P.P. for the State and learned counsel for the
informant/Opposite Party No.2.

2. This application has been filed under Section 482
of the Code of Criminal Procedure, 1973, on behalf of the
petitioner for quashing the order dated 01.04.2022 passed by the
learned C.J.M., Sitamarhi, in Runnisaidpur P.S. Case No. 512 of
2021 (G.R. No. 3720 of 2021), whereby and where under the
learned C.J.M. took cognizance for the offence punishable under
Sections 406, 420, 504 and 506 of the Indian Penal Code against
this petitioner.



3. The prosecution story in brief is that on 15.02.2015, this petitioner came to the informant's house and took certain advance with assurance to execute the sale deed on payment of total amount within four years. It is the case of the informant that thereafter he paid to entire amount but the petitioner refused to execute the sale deed or refund the consideration money. It is further alleged that on 21.09.2021, this petitioner came to the house of the informant and threatened him and his family members to implicate them in false cases.

4. It is submitted by learned counsel appearing on behalf of the petitioner that after investigation the police submitted the final form in favour of the petitioner but the learned C.J.M., vide order dated 01.04.2022, took cognizance against the petitioner under Sections 406, 420, 504 and 506 of the Indian Penal Code. It is next submitted that as a matter of fact, petitioner deals in sand and chips. The informant purchased sand and chips and in lieu thereof, issued cheques, as mentioned in the F.I.R.. The petitioner has also issued cash memo for sale of sand and chips in the name of the informant. It is next submitted that taking advantage of the situation, petitioner has falsely been implicated in this case due to political rivalry. It is further submitted that in the past, the petitioner fought the



election of Zila Parishad against wife of the informant and some other persons, and due to this political rivalry, this false and concocted case has been lodged. In order to settle civil dispute and political rivalry, this false and concocted case has been lodged to pressurize the petitioner to succumb to the dictates. It is further submitted that bare perusal of the F.I.R. as well as the materials collected during course of investigation depicts that dispute is of civil nature. As per F.I.R., the petitioner received certain consideration money in advance in lieu of execution of sale deed in favour of the informant and thereafter refused to execute the sale deed in favour and also return the amount. It is further submitted that at best it is a case of breach of promise, which does not give rise to criminal prosecution for cheating, unless fraudulent or dishonest intention is shown right at the beginning of the transaction. In support, learned counsel for the petitioner places reliance upon judgment of the Hon'ble Supreme Court passed in the case of ***Kunti and Anr. Versus State of Uttar Pradesh and Anr.*** passed in ***Cr. Appeal No. 1380 of 2023.***

5. On the other hand, learned A.P.P. for the State and learned counsel appearing on behalf of the informant/Opposite Party No. 2 have vehemently opposed the arguments advanced



on behalf of the petitioner and supported the impugned order. It is submitted that the petitioner being influential person, in collusion with the police, got the final form submitted in the instant case in his favour but on protest petition filed by the informant, the learned C.J.M., vide order dated 01.04.2022, took cognizance in the instant case under Sections 406, 420, 504 and 506 of the Indian Penal Code, finding *prima facie* case being made out against the petitioner. At this stage, it cannot be said that no *prima facie* case is made out against the petitioner and as such, no interference is required by this Hon'ble Court at this stage and the instant application is fit to be dismissed.

6. Having heard the submissions advanced by learned counsels for the parties and from perusal of the F.I.R., it is apparent that at best the petitioner is alleged to have failed to keep up the promise and despite receiving consideration money in advance, refused to register sale deed in favour of the informant. Dispute, as alleged by the informant, is essentially civil in nature. A breach of contract or promise or agreement does not give rise to a criminal prosecution for cheating, unless fraudulent and dishonest intention is shown right at the beginning of the transaction. It is an effort to settle the civil dispute and claims which do not involve any criminal offence,



by applying pressure through criminal prosecutions, should be deprecated and discouraged. In this connection, reliance can be placed on judgment of the Hon'ble Apex Court passed in the case of ***G. Sagar Suri and Anr. versus State of U.P. and Ors.*** reported in ***(2000) 2 SCC 636*** wherein the Hon'ble Apex Court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

7. Having regard to the well established principles, facts and circumstance of the case and the fact that the present dispute is entirely with respect to property, and more particularly buying and selling thereof, it appears that a criminal color has been lent to an issue of civil nature.

8. In view of the aforesaid facts and circumstances of the case, the order of the learned C.J.M., Sitamarhi, dated 01.04.2022, passed in Runnisaidpur P.S. Case No. 512 of 2021 (G.R. No. 3720 of 2021), is improper.

9. Accordingly, the order dated 01.04.2022 passed by the learned C.J.M., Sitamarhi, in Runnisaidpur P.S. Case No. 512 of 2021 (G.R. No. 3720 of 2021), is hereby quashed with respect to this petitioner.



10. Accordingly, this quashing application is allowed.

(Prabhat Kumar Singh, J)

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