

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48216 of 2023

Arising Out of PS. Case No.-10 Year-2022 Thana- GORAUL District- Vaishali

DINA NATH MAHTO, Son of Late Bharat Mahto, Resident of Village - Bari
Pahari, P.S.- Agam Kuan, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shambhu Kumar, Son of Brahamdeo Prasad Singh, Resident of Village -
Pirapur Mathura, P.O - Pirapur Mathura, P.S.- Goraul, District - Vaishali.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Amaresh Kumar, Advocate
For the Opposite Party/s	:	Mr. Anant Kumar 1, APP
For the O.P no.2	:	Mr. Kaushal Kishor, Advocate
		Ms. Aarushi Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 10-07-2024

1. Heard learned counsel for the petitioner, learned
APP for the State and learned counsel for the opposite party no.2.

2. The petitioner has filed instant application praying
for quashing the order dated 16.11.2022 passed in Goraul P.S.
Case no. 10 of 2022 whereby the learned Additional Chief
Judicial Magistrate-I, Vaishali, Hajipur was pleased to take
cognizance under sections 406, 420, 467, 468, 471 and 34 of the
Indian Penal Code.

3. The prosecution case as per the written statement
dated 9.1.2022 of the opposite party no.2- informant addressed to
the Officer In-charge of Goraul Police Station alleges *inter alia*
that he resides in Patna and runs a coaching. It is stated that in



course of his work, he became acquainted with the three accused persons including the petitioner herein. Slowly they became close to him. Subsequently the petitioner made a request to help him in the marriage of his daughter. The informant states that the petitioner took out a non-judicial stamp paper of the value of Rs. 1,000 and stated that he would execute an agreement for sale on the said document with respect to an immovable property measuring an area of 1200 sq ft. at the rate of Rs. 23.75 lakhs per *katha*. The informant states that being influenced with the talk of the petitioner, he gave an advance of Rs. 3.75 lakhs to the petitioner who executed an agreement for sale, a copy of which has been brought on record as Annexure-A to the counter affidavit filed on behalf of the opposite party no.2. The informant further states that on the request by him to the petitioner to execute the sale deed, he asked for the balance of the total consideration amount of Rs. 23.75 lakhs. The informant gave a sum of Rs. 95,000/- on 22.7.2013, Rs. 3 lakhs on 9.9.2013 and again Rs. 3 lakhs on 21.9.2013. Thereafter, it is stated that he paid a further amount of Rs. 11 lakhs in cash on 12.2.2019 for which no document was prepared. The same was given in presence of witnesses Musfir Prasad Singh and Devendra Singh. Thus a total sum of Rs. 21.7 lakhs has been paid but the petitioner, inspite of request by the informant has refused to



execute the sale deed pursuant to the said agreement for sale.
Hence the instant FIR.

4. After investigation of the case, Chargesheet no. 43 of 2022 was submitted on 31.8.2022 under sections 406, 420, 467, 468, 471 and 34 of the Indian Penal Code. By order dated 16.11.2022 passed in Goraul P.S Case no. 10 of 2022, cognizance was taken by the learned trial Court. It is against this order taking cognizance that the instant application has been preferred.

5. It is submitted by learned counsel for the petitioner that the petitioner has been falsely implicated in the case. Accepting the allegations as levelled in the FIR, the case at best as made out by the informant is one of breach of contract which cannot be permitted to give rise to a criminal proceeding by registration of the FIR. Referring to clause 3 of the agreement for sale (Annexure-2) between the parties, learned counsel submits that the same was valid for a period of six months and the total consideration amount of Rs. 23.75 lakhs had to be paid by the informant within the aforesaid period. Admittedly, there has been a breach of contract on part of the informant and it is for this reason that the advance amount stood forfeited as per the specific clause at page no.4 of the agreement. Learned counsel finally submits that the agreement for sale, violation of which is alleged, is of the year 2013 and the civil remedy of filing a suit etc of the



informant having been barred in view of Article 54 of the Limitation Act, 1963, this FIR has been lodged more than 8 years later in the year 2022. In support of his contentions, learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court dated 1.3.2023 in Cr. Appeal no. 581 of 2023 (Sarabjit Kaur vs. the State of Punjab).

6. The application is opposed by learned APP for the State and learned counsel for the opposite party no.2- informant. It is submitted by learned counsel for the opposite party no.2 that on the FIR being registered by the informant, on investigation having been carried out, the case was found to be true and charge-sheet was submitted. Further on perusal of the material that has transpired in course of investigation, cognizance was taken by the learned trial Court by the order impugned dated 16.11.2022. In reference to the statements made in paragraph nos. 6, 7 and 8 of the petition filed by the petitioner, it is submitted that once the petitioner has accepted that the informant paid an advance against the agreement for sale, the learned trial Court at the stage of taking cognizance only has to see as to whether a *prima facie* case is made out against the accused persons or not. From the allegations in the FIR and the material that has transpired in course of investigation, *prima facie* case under sections 406, 420, 467, 468, 471 and 34 of the Indian Penal



Code is made out against the petitioner and thus the learned trial Court has rightly taken cognizance in the case. In support of his contentions, learned counsel for the opposite party no.2 has relied on the judgments in the case of **Ashok Kumar Ray vs. State of Bihar & Anr; 2013 (2) PLJR 467, Atul Rao vs. State of Bihar & Anr; 2012 (2) PLJR 218, Syed Askari Hadi Ali Augustine Imam vs. State (Delhi Administration) & Anr; (2009) 5 SCC 528 and Lalmuni Devi vs. State of Bihar; 2001 SCC (Cri.) 275.**

7. Having heard learned counsel for the parties and having perused the material on record, the Court finds that the allegations in the FIR arise as a result of breach of an agreement to sale. As per the prosecution case, the petitioner and the informant had entered into an agreement to sell with respect to an immovable property measuring an area of 1200 sq ft. appertaining to *khata* no. 209, *khesra* no. 522 (part), *tauzi* no. 145, thana no. 15 situated in village Jakariyapur under Circle office Sadar in the District of Patna. As per the agreement for sale brought on record as Annexure -2 to the application and which is also annexed as part of the FIR, the total consideration amount was Rs. 23.75 lakhs. An advance of Rs. 3.75 lakhs was paid at the time of entering into the agreement for sale and the validity of the said agreement was of six months. The recital



thereof provided that the purchaser would pay the total consideration amount within the period fixed and in case the total amount was not paid then on the expiry of the agreement, the amount already paid would stand forfeited. Even as per the case of the informant, as stated in the FIR, besides the advance of Rs. 3.75 lakhs at the time of entering into an agreement for sale on 13.3.2013, the subsequent amount paid were Rs. 95,000 on 22.7.2013, Rs. 3 lakhs on 9.9.2013, Rs. 3 lakhs on 21.9.2013 and Rs. 11 lakhs on 12.2.2019. The informant further states that thus he had paid a total sum of Rs. 21.7 lakhs.

8. So far as payment of amount is concerned, Rs. 3.75 lakhs was paid at the time of entering into agreement for sale on 13.3.2013. Further from the receipt brought on record by the informant as Annexure-A series to the counter affidavit filed on behalf of the opposite party no.2, it transpires that Rs. 95,000/- was paid by the informant on 22.7.2013, Rs.3 lakhs on 9.9.2013 and Rs.3 lakhs on 21.9.2013. Receipt of all these amounts have been furnished and has been brought on record by the informant in his counter affidavit.

9. At this stage it would be evident that as per the agreement for sale dated 13.3.2013, the total consideration amount of Rs. 23.75 lakhs had to be paid by the informant by 13.9.2013, however as per the receipt issued by the petitioner



and brought on record by the informant even beyond the said date, ie till 21.9.2013, the informant had paid only a sum of Rs. 10.7 lakhs. Thereafter, as it transpires from the records of the case, the informant took no steps for either paying the balance consideration amount nor filed any suit for specific performance of contract. It was more than 8 years later that the limitation (of 3 years) for filing suit for specific performance contract having been barred that the informant lodged the instant FIR on 9.1.2022. In the opinion of the Court, it was purely a civil dispute to which a criminal colour is being given by the informant.

10. At this stage, it would be relevant to take note that in the FIR, the case of the informant is that after payment of the amount of Rs. 3.75 lakhs at the time of the agreement for sale, he and his brother requested the petitioner to execute the sale deed but the petitioner kept asking for the balance consideration amount. On one hand it appears that the relationship between the parties were strained as the informant was not executing the sale deed, as per the informant's claim which led to payment of Rs. 95,000/-, Rs. 3 lakhs and Rs.3 lakhs by the informant all in the year 2013 for which the petitioner issued receipt. However, surprisingly at this stage, the informant claims in the FIR that 5 years later on 12.2.2019, he paid a sum of Rs. 11 lakhs in cash and for which he did not take any receipt or in the informant's



words, no document was prepared for the same. This, in the opinion of the Court, is clearly unbelievable and has only been made to explain the delay in lodging of this case or a civil suit, which has still not been filed.

11. Coming to the judgments relied on by learned counsel for the opposite party no.2, so far as the judgment in the case of **Ashok Kumar Ray** (*supra*) is concerned, the facts of the said case were completely different. The petitioner of the said case had entered into an agreement with the Minor Irrigation Department of the Government for carrying out some work. He had further entered into an agreement with one another person (informant of the said case). According to the internal agreement on receiving payment from the Government, the petitioner had to make payment to the informant. Though work was carried out by the informant, the amount was not paid by the petitioner to the informant and on the informant of the said case demanding money, the petitioner on the point of pistol and with the assistance of hired criminals, had further extracted a sum of Rs. 25,000/-. The allegations in respect to the fraud as also the commission of the offence were all found to be true and chargesheet submitted. Thus in the facts of the case, the ratio of the said judgment has no applicability in the facts of the instant case. So far as judgment in the case of **Atul Rao** (*supra*) relied



on by learned counsel for the opposite party no.2 is concerned, once again the facts of the case have no similarity to the facts of the instant case. In the said case, one Pankaj Kumar committed suicide by hanging himself from the ceiling fan and in the suicide note left behind by him, it was stated that he committed suicide because of the petitioner and one another regularly pressurizing him for money. In course of investigation, it had transpired from the independent witnesses that the deceased had taken Rs. 4 lakh from the petitioner on the pretext of ensuring the petitioner's admission in Lal Bahadur Shastri Institute of Management at Delhi. Thus the facts of the said case also has no similarity to the present case and the judgment is of no assistance to learned counsel for the opposite party no.2.

12. The next judgment relied on by learned counsel for the opposite party no.2 is in the case of **Syed Askari Hadi Ali Augustine Imam** (*supra*). The same related to forgery of the will by one of the parties as also the allegation of trespass into the property and cheating. The Hon'ble Supreme Court held that even if the will is found to be genuine and no case under section 468 of the Indian Penal Code is found to have been made out, the appellant may still be convicted for trespass into the property. Thus in the facts of the case, the ratio of this judgment relied on by learned counsel for the opposite party no.2 is also of no



assistance to him. The relevant paragraph no. 43 of the judgment is extracted herein below for ready reference :-

“43. The FIR was lodged not only in regard to forgery of the will but also on the cause of action of a trespass. The appellant admittedly is facing trial under Sections 420, 468 and 448 IPC. It is, thus, possible that even if the will is found to be genuine and that no case under Section 468 IPC is found to have been made out, the appellant may be convicted for commission of other offences for which he has been charged against, namely, trespass into the property and cheating. If it is found that the appellant is guilty of trespass, he may be asked to hand over possession of the premises in question to the complainant.”

13. The next judgment relied upon by learned counsel for the opposite party no.2 is the judgment of the Hon’ble Supreme Court dated 15.12.2000 in the case of **Lalmuni Devi vs. State of Bihar & Ors. [SLP (Crl.) 701 of 2000]**. In the said case, the allegation in the complaint was that the respondent nos. 2 to 10 therein had fraudulently got the father of the complainant to execute a gift deed. The High Court had quashed the complaint on the ground that the complaint spelled out a civil wrong and therefore continuance of the criminal prosecution would be an abuse of process of the Court. The Hon’ble Supreme Court set aside the order of the High Court



observing that it was settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. It observed in the said case that the High Court does not state that on facts, no offence is made out. It may be observed here that the allegations in the said case was of the respondents fraudulently getting the father of the complainant to execute a gift deed. The facts of the instant case are different and distinct wherein both the parties agree to have entered into an agreement to sell and even the complainant herein is alleging breach of the said agreement by the petitioner. Thus in the opinion of this Court, the judgment relied on is of no assistance to the case of the opposite party no.2.

14. So far as the judgments relied on by learned counsel for the petitioner is concerned, in the case of **Sarabjit Kaur** (*supra*), the Hon'ble Supreme Court held as follows :-

“12. There is nothing on record to suggest that any notice was issued by the respondent No.2 or the vendee to the appellant to get the sale deed registered just either before expiry of the last date fixed for executed of sale deed or immediately thereafter. No civil proceedings were also initiate rather the respondent No.2 proceeded only by filing complaints with the police two of which were earlier filed. Had there been any civil proceedings



initiated, the question of readiness and willingness of the vendee is also an aspect to be examined by the Court.

13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed.



Allowing the proceedings to continue would be an abuse of process of the Court.”

15. Further, the Hon’ble Supreme Court in the case of **Indian Oil Corporation vs. NEPC Limited; (2006) 6 SCC 736**, has held in paragraph no. 13 as follows :-

“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)

“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.”

16. Thus, having heard learned counsel for the parties and having perused the material on record, the Court is of the opinion that so far as the allegations in the FIR lodged by the opposite party no.2 in the instant case is concerned, the dispute arising from the contents thereof is purely a civil dispute with respect to breach of an agreement for sale entered into between the parties and the informant by filing the FIR after more than a period of 8 years in the year 2022 has tried to give a civil dispute the nature of a criminal case for obvious reasons as stated above. In the opinion of the Court, the continuance of the criminal proceedings would be an abuse of the process of the Court. The petitioner has made out a case for quashing of the order dated 16.11.2022 whereby cognizance was taken by the learned trial Court.

17. In view of the facts and circumstances of the case, the order dated 16.11.2022 passed in Goraul P.S Case no. 10 of



2022 (G.R no. 1321 of 2022) whereby the learned Additional Chief Judicial Magistrate-I, Vaishali at Hajipur was pleased to take cognizance under sections 406, 420, 467, 468, 471 and 34 of the Indian Penal Code is hereby quashed.

18. The application is allowed.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	15.05.2024
Uploading Date	10.07.2024
Transmission Date	

