

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1357 of 2019

Arising Out of PS. Case No.-659 Year-2018 Thana- SAHARSA SADAR District- Saharsa

Binod Kumar Singh, Son of Late Shaligram Singh, Resident of Village-Gang
Jala Tiranga Chock, Ward No.15, P.S. and District-Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar Through The Director General Of Police, Bihar, Patna
2. The Superintendent of Police, Saharsa Saharsa
3. The Deputy Superintendent of Police, Saharsa Saharsa
4. The S.H.O. of Saharsa Sadar Police Station, Saharsa Saharsa
5. The Investigating Officer in connection with Saharsa Sadar P.S. Case No.659/2018., Saharsa
6. Purushottam Kumar Singh, Son of Sri Madan Prasad Singh Resident of Village-Sant Nagar, Ward No.15, P.S. and District-Saharsa

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shekhar Kumar Singh, Advocate
For the State	:	Mr. Sumar Kumar Jha, AC to AAG 3
For Private Respondent	:	Mr. Diwakar Prasad Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

7 14-03-2024 It is not in dispute that the petitioner agreed to sell out a piece of land in favour of the Respondent No. 6 at a consideration price of Rs. 12 lakh, 40 thousand. The Respondent No. 6 agreed to such proposal and paid a sum of Rs. 9 lakh by cheque and Rs. 3 lakh and 40 thousand by cash to the petitioner. It is also not in dispute that the land was not transferred by the petitioner in favour of the Respondent No. 6 by executing registered deed of sale till date. When the Respondent No. 6 failed to pursue the petitioner to sell out the land, demanded the



money to be returned to him. The petitioner issued two cheques, one of Rs. 6 lakhs and another of Rs. 6 lakh and 40 thousand, in favour of the petitioner. Both the cheques were dishonored. The Respondent No. 6, however, did not take any step for bouncing the cheques under Section 138 of the Negotiable Instruments Act. However, subsequently, he has filed written complaint before the jurisdictional police station against the petitioner alleging that the petitioner has misappropriated and committed cheating of Rs. 12 lakh and 40 thousand. A case under Sections 420 and 406 of the IPC, read with Section 138 of the Negotiable Instruments Act, was registered against the petitioner. In the said case, the police submitted a charge-sheet on 31st of May, 2019.

2. The petitioner has approached this Court for quashing of the FIR on two grounds:-

(i) The cause of action of the FIR was initiated with bouncing of cheques under Section 138 of the Negotiable Instruments Act and therefore no FIR can be drawn to prosecute a person in a cheque bounce case. A case under Section 138 of the Negotiable Instruments Act can only be registered on complaint by the payee or holder in due course of the cheque within stipulated period of time, as mentioned in the statute. Therefore, the FIR itself is illegal, bad and liable to be quashed.



(ii) It is stated by the learned Advocate for the petitioner that the entire transaction was made on the basis of a contract and for violation of contract. The opposite party has the remedy in Civil Court and initiation of a proceeding in the Criminal Court is abuse of the process of the Court.

3. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in the case of ***State of U.P. through C.B.I. S.P.E Lucknow and Anr vs. R.K. Srivastava and Ors.*** reported in ***AIR 1989 SC 2222***. He also refers to a decision of Co-ordinate Bench of this Court passed in a proceeding under Section 482 of the Cr.P.C. in the case of ***Ram Prakash Mathur @ Ladlay Mathur vs. State of Bihar and Anr.*** reported in ***1998 (2) PLJR 288***.

4. In the aforesaid decisions, it is held that mere non-fulfillment of commitment by the accused will not attract criminal liability under Sections 420 and 406 of the IPC.

5. The facts of the instant case are absolutely different from the facts of the decisions cited by the learned Advocate for the petitioner.

6. It is not in dispute that the petitioner agreed to sell out the subject land at Rs. 12 lakh and 40 thousand. He received the entire consideration money but did not execute the sale



deed. Thereafter, he returned the entire consideration price by issuing two cheques. Both the cheques were bounced. Therefore, the petitioner on the date of issuance of cheque knew that the cheques were issued on an account where there was no sufficient money. This fact, *prima facie*, establishes that from the very beginning, the petitioner fraudulently and dishonestly induced the opposite party and by such inducement, he was deceived to deliver a sum of Rs. 12 lakh and 40 thousand to the petitioner. The fact remains that the said amount has not been received by the opposite party till date.

7. With such fraudulent and dishonest means of deception, he approached the opposite party to sell out the land in question, but it was never sold out.

8. On the contrary, on good faith and believe, the opposite party paid him a sum of Rs. 12 lakh and 40 thousand. Thus, there are ample ingredients of offence under Section 420 of the IPC against the petitioner. Moreover, non-payment of money amounts to criminal misappropriation.

9. Thus, this Court is of the view that there is sufficient ground to hold that the Investigation Authority has rightly filed charge-sheet under Sections 420 and 406 of the IPC against the petitioner and the petitioner must face trial before the



Competent Court of Criminal Jurisdiction.

10. In view of the above discussion, I do not find any merit in the instant writ petition and accordingly, the instant writ petition is dismissed.

(Bibek Chaudhuri, J)

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