

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53775 of 2024
Arising Out of PS. Case No.-342 Year-2023 Thana- VAISALI COMPLAINT CASE District-
Vaishali

-
1. DR. RAGHVENDRA PRASAD SON OF LATE BALLABH PRASAD
RESIDENT OF GAUSHALA ROAD, MITHANPURA, P.S.-
MITHANPURA, DISTT.- MUZAFFARPUR, PRESENTLY RESIDING AT
HOUSE NO. F-5, SECTOR-41,, P.S.- SECTOR 39, NOIDA, UTTAR
PRADESH-201303
 2. PRASHANT KUMAR SON OF DR. RAGHVENDRA PRASAD
RESIDENT OF GAUSHALA ROAD, MITHANPURA, P.S.-
MITHANPURA, DISTT.- MUZAFFARPUR, PRESENTLY RESIDING AT
HOUSE NO. F-5, SECTOR-41,, P.S.- SECTOR 39, NOIDA, UTTAR
PRADESH-201303

... .. Petitioner/s

Versus

1. The State of Bihar
2. DEEPAK KUMAR SONOF KESHAVCHANDRA PRASAD RESIDENT
OF VILLAGE- RAMPUR NAUSAHAN, P.O.- HAJIPUR, P.S.-
INDUSTRIALAREA HAJIPUR, DISTT.- VAISHALI, PIN CODE-844102

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Ms. Shama Sinha
For the Opposite Party/s	:	Mr. P.N. Shahi, Sr. Advocate
		Mr. Suryakant
For the State	:	Mr.Jharkhandi Upadhyay

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 09-09-2024 1. Heard learned counsel for the petitioners and

learned Additional Public Prosecutor appearing on behalf of the

State as well as learned counsel for the opposite party.

2. This application has been filed for quashing of
order dated 20.05.2023 passed by learned JM 1st Class-cum-
A.M, Vaishali at Hajipur vide which cognizance has been taken
under section 420 of Indian Penal Code and summons have been
issued to the petitioners in connection with Complaint case no.
342 of 2022.

3. The brief allegations made in the present complaint



are as follows:

(a) It is alleged by the complainant, Deepak Kumar, that he intended to purchase a piece of land situated at Muzaffarpur for business purposes. When the petitioners became aware of this, they contacted the complainant in Hajipur in April 2022 and offered to sell the land and house located at Plot No.-403, C.S.P No.-255, 256, 257, R.S.P No.- 164 (A), (B), (C), Holding No.-235, Old- 221, situated on Road No.- 4, Juran Chapra, District- Muzaffarpur, stating that they need money.

(b) It is further alleged that the Petitioner No. 1 had informed the complainant that the property was purchased through a registered sale deed, and they had shown the complainant a copy of the registered sale deed advising him to verify its authenticity.

(c) It is also alleged that the complainant verified the property details and found the same to be correct, thus agreed to purchase the said property. The property value was agreed upon at Rs. 01 crore 78 lakh between the complainant and the petitioners.

(d) It is alleged that when the complainant requested to execute the agreement on a non-judicial stamp then the petitioner No. 1 asked him to come to their residence at



Muzaffarpur on 07.05.2022 for the agreement to be made. When the complainant visited the petitioners' house at Gaushala Road, Muzaffarpur with witnesses, Petitioner No. 2, on the instructions of Petitioner No. 1, drafted the agreement on plain paper and thereupon both the petitioner No. 01 and the complainant signed the said agreement dated 07.05.2022 and the petitioner No. 02 also signed as witness. The complainant transferred Rs. 10 lakhs to the joint account of the petitioners through RTGS mode on the same day.

(e) It is further alleged that on 07.06.2022, upon the request of the petitioners, the complainant transferred another Rs. 5 lakhs from Hajipur through MMTS/IMPS to the account of petitioner No. 1 and another Rs. 5 lakhs on 28.06.2022 to the joint account of both petitioners through RTGS.

(f) It is alleged that in total, the complainant deposited Rs. 20 lakh into the account of Petitioner No. 1. When the complainant requested the petitioners to come to Muzaffarpur to complete the remaining formalities and register the land in favour of the complainant, the petitioners suggested to wait till October 2022 due to a forthcoming increase in government land prices.

(g) It is alleged that after the expiry of six-month



period as stipulated in the agreement which ended on 02.11.2022, despite multiple phone calls and visits to Muzaffarpur and Noida, the petitioners refused to meet or answer calls from the complainant.

(h) It is alleged that on 04.11.2022, the complainant visited the petitioners' residence in Noida with two friends to settle the remaining Rs. 1 crore 58 lakh and complete the land registration. Furthermore, the petitioners refused to register the land, and demanded a higher amount than the previously agreed price. Despite repeated requests, the registration was not carried and rather it is alleged that the petitioners abused and threatened the complainant over the phone.

(i) It is alleged that the complainant, through his Advocate sent a legal notice to the petitioners on 07.11.2022 via registered post at all three addresses of the petitioners.

(j) Petitioner No. 1 responded on 28.11.2022, refusing to register the land. A second notice was sent on 02.12.2022 by the petitioners through their Advocate, reiterating therein the refusal to register the land as per the agreement dated 07.05.2022.

(k) It is alleged that when the complainant reported the matter to the Industrial Area Police Station in Hajipur, the



officer advised him to file a case in the court. It is further alleged that the petitioners have conspired, deceived and used the complainants' money for their own purposes, causing injustice by abusing and threatening the complainant.

4. Learned counsel for the petitioner submits that the Petitioner no. 1 is about 92 years old. He is a very respected doctor who practiced at Muzaffarpur for about 50 years. Since March 2020, he has been staying with his son Prashant Kumar (Petitioner no. 2) at Noida, U.P. The Petitioner No. 1 owing to his advanced age has become very weak and can barely walk, that too with the help of a walking stick. He suffers from multiple ailments including that of heart, blood pressure, diabetes and eye sight.

5. Learned counsel for the petitioners further submits that the Petitioner no. 2 is 63 years old son of Petitioner no. 1 who is a respectable Professor of Economics in a college under University of Delhi, Delhi. He has been teaching for the last about 38 years and resides in Noida.

6. Learned counsel further submits that the Complainant is a property dealer by profession. The Complainant taking undue advantage of the old age and simplicity of Petitioner no. 1 and the fact that latter was staying



mostly at Noida with his son approached Petitioner no. 1. The Complainant took the Petitioner no. 1 in confidence by saying that he is just like a family member as he knows some people of Petitioners' family and has been dealing in sale and purchase of property.

7. It is also argued that the Complainant taking advantage of the old age of the Petitioner no. 1, influenced him by putting him in fear that the unattended property of Petitioner no. 1 in Muzaffarpur is under grave threat of being encroached by the criminals. The Complainant took the name of infamous musclemen claiming that they are eyeing his unattended property. The complainant after influencing the Petitioner no. 1, expressed his keenness to purchase the property of the Petitioner no. 1 located at Juran Chapra, Muzaffarpur. The Complainant without giving any time to the Petitioner no. 1 to think about the proposal insisted on finalizing the deal immediately. The Complainant got the hand-written agreement drafted in Noida itself.

8. Learned counsel appearing on behalf of the petitioners submits that the real fact is that the complainant made payments of Rs. 10 lakhs on 07.05.2022, Rs. 5 lakhs on 07.06.2022, and Rs. 5 lakhs on 28.06.2022. However, after



payment of advance amount of Rs. 20 lakhs in three installments, the Complainant started evading making further payment to the Petitioner no. 1 and started insisting on possession of the property. The Complainant did not make any further payments towards the total consideration amount of Rs. 1,78,00,000/-. The complainant failed to perform his obligations under the agreement for sale dated 07.05.2022.

9. It is also submitted that when the Complainant made no further payment to the Petitioner no. 1 and it came to the knowledge of the Petitioner no. 1 that the Complainant is attempting further to sell their property to other buyer without making any further payment to the Petitioner no. 1, he informed the Complainant that he is going to cancel the agreement if payment is not made within the stipulated time of 180 days as agreed in the agreement. After expiry of 180 days i.e., on 02.11.2022, the Complainant sent a legal notice dated 07.11.2022 to the Petitioner no. 1. The learned counsel for the petitioners emphasized that the Complainant had the details of the bank account of Petitioner no. 1 in which he had earlier transferred the amount of Rs. 20 lakhs in three installments and therefore nothing prevented him from transferring the balance amount of consideration within the stipulated period of 180



days. However, the complainant deliberately chose not to do so and maliciously waited for the sale agreement to expire with *malafide* purpose of weaving litigation around the property. The Petitioner no. 1 duly replied to the legal notice and also sent a letter dated 28.11.2022 intimating the Complainant that the agreement has expired due to the natural passage of time and though the complainant is not entitled for refund of the advance amount still he is ready to refund the advance paid by the Complainant.

10. It is submitted on behalf of the petitioners that the entire allegations made by the complainant are vague, omnibus, and false without an *iota* of proof which could bring home ingredients of Section 420 of Indian Penal Code. The petitioners never promised or induced the complainant rather it was the Complainant who approached the Petitioner no. 1 in Noida and influenced him with false stories of encroachment of his unattended property by criminals. The entire complaint is lacking in material and is ridden with discrepancies and incorrectness. The complainant has also not offered any explanation about the delay of several months in filing the complaint from the date of alleged transfer of the amount.

11. Learned counsel for the petitioners further



submits that the allegations made by the Complainant are vague, highly improbable, incoherent, fallacious, and without any material in support. The essential ingredients of Section 420 of the Indian Penal Code are:-

(i) Cheating;

(ii) Dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and

(iii) *Mens rea* of the accused at the time of making the inducement.

12. It is further submitted that even if all the allegations in the complaint are taken to be true at the face value, the basic and essential ingredients of cheating against these Petitioners are missing. The criminal proceedings are not a shortcut for other remedies. Since no case of dishonest intention of inducement is made out and the essential ingredients of Section 420 Indian Penal Code are missing against these Petitioners, thus the prosecution under Section 420 Indian Penal Code is liable to be quashed.

13. Learned counsel appearing for the petitioners further submits that it was apparent from the contents of the



complaint as well as the statement of enquiry witnesses that the Petitioners reside outside the jurisdiction of the trial Court. Hence, the trial Court was required to hold a mandatory inquiry as envisaged under Section 202 of the Cr. P.C (Code of Criminal Procedure, 1973) before summoning the Petitioners as accused. The learned J.M. 1st Class-cum-A.M, Vaishali at Hajipur therefore failed to follow the procedure laid down under Section 202 of the Cr.P.C.

14. Learned counsel for the petitioners further submits that the learned Magistrate was obligated to postpone the process against these Petitioners and should have either enquired into the case himself or directed an investigation to be made by a police officer or by such other officer as it thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding in a case as the accused resides beyond the area in which the learned Magistrate exercises its jurisdiction. The learned J.M. 1st Class-cum-A.M, Vaishali at Hajipur had failed to carry out any enquiry or order an investigation as contemplated under the amended Section 202 of the Cr. P.C. Thus, the order dated 20.05.2023 is erroneous and fit to be set aside since it is based on a flawed enquiry and non-application of judicial mind. The learned Magistrate had failed



to consider the lack of substantial evidence against the petitioners and issued summons and the cognizance order mechanically. Learned counsel further submits that the learned Magistrate failed to comply with the mandatory requirement of conducting an inquiry under Section 202 Cr. P.C. before issuing process under Section 204 Cr. P.C. against the Petitioners, who reside outside the territorial jurisdiction of the court. This non-compliance renders the cognizance order and subsequent proceedings *void ab initio*.

15. It is further submitted that the present dispute is purely of a civil nature. The complainant has already filed a Title Suit in the District court at Muzaffarpur, Bihar, being Title Suit No. 106 of 2023 which is pending adjudication. The civil dispute involves the same property and the same parties. The issues raised in the criminal complaint are identical to those in the Title Suit, making it clear that the complainant is attempting to misuse the criminal justice system to gain an unfair advantage in the civil dispute. Therefore, the criminal proceedings are nothing but an attempt to pressurize and harass the Petitioners. The pendency of the Title Suit indicates that the matter is already *sub judice* and requires civil adjudication rather than criminal prosecution.



16. It is submitted that the complaint was filed with *malafide* intent to harass and pressurize the Petitioners due to their significant property interests. The failure on the part of the complainant to fulfill his contractual obligations and thereafter the sudden lodging of the criminal complaint after several months indicate the malicious intent behind the allegations.

17. Furthermore, that the present case is a classic example of misuse of judicial process to gain illegal advantages and harass the Petitioners. The false and frivolous complaint, coupled with the mechanical cognizance taken by the learned Magistrate, highlights the abuse of the legal system to settle personal scores.

18. Learned counsel for the petitioner in support of the contentions has relied upon the judgment delivered by the Hon'ble Supreme Court in the case of ***Murari Lal Gupta Vs. Gopi Singh*** reported in ***(2005) 13 SCC 699*** and ***Ravindra Kumar Madhanlal Goenka & Anr. Vs. M/s Rugmini Ram Raghav Spinners P. Ltd.*** reported in ***(2009) 11 SCC 529***.

19. During the course of hearing, the petitioner has produced a demand draft of Rupees Twenty Lakhs which was the amount given by the opposite party No. 2 as advance to the petitioners in lieu of the agreement.



20. Learned Senior Counsel for the opposite party No. 2 on instruction has refused to accept the said demand draft.

21. Learned Senior Counsel for the opposite party No. 2 and the State have opposed the application for quashing and supported the allegations levelled against the petitioners and has submitted that from the reading of the complaint criminal offence are made out.

22. Learned Additional Public Prosecutor has also opposed the application.

23. I have considered the submissions of the parties.

24. It is not in dispute that the petitioner had entered into an agreement with the opposite party No. 2 for selling the plot in question. The advance of Rupees Twenty Lakhs was given to the petitioners but the entire amount of Rs. 1.78 Crore was to be paid within 180 days. The opposite party No. 2 failed to pay agreed amount within 180 days and thereafter the petitioners did not transfer the land in favour of the opposite party No. 2.

25. The opposite party No. 2 has also filed a Title Suit in the District Court, Muzaffarpur for specific performance of contract.

26. The opposite party No. 2 is not himself a buyer



but rather, he is a broker and after entering into the contract with the petitioner, he was looking for customers/purchasers and when he could not get customers/purchasers, he failed to make entire payment in the time agreed between the parties and therefore, the petitioners have not transferred the land in favour of the opposite party No. 2.

27. The Hon'ble Supreme Court in the case of ***Murari Lal Gupta (supra)*** 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.”



28. The Hon'ble Supreme Court also in the case of ***Ravindra Kumar Madhanlal Goenka & Anr. (supra)***. In paragraph No. 8, 9, 10, 11, 12 and 13 as follows :-

“8. Aggrieved by the said order of the High Court, the present SLP has been preferred. It is the case of the appellant the no criminal proceeding can be initiated as the matters are essentially civil in nature and business disputes cannot be resolved by criminal prosecution. It is the case of the appellant that 1st appellant at the request of the respondent procured 145 bales and kept for long time with the dealers place and as the respondent failed to make payment despite for waiting long duration, the 1st appellant had stored the 145 bales of cotton in the Central Ware House at Akola on 18.03.2004 by paying regular rent and it was being extended from time to time and still the bales procured for him is remain at Central Ware House, Akola. It was contended that had the respondent paid the entire amount for the 145 bales, the 1st appellant could have dispatched the bales to the respondent. It is the case of the appellant that the entire amount had already been invested in procuring bales for him by investing additional amount of another Rs. 10 lakhs by raising bank loan by the 1st appellant. Hence, there was no cheating or fraud played by the 1st appellant. In view of the same it was contended that it was an alleged breach of contract that's also only at the last stage of the performance of the agreement which was due to dispute of payment of the entire advance amount. In view of this, the High Court ought to have quashed the criminal proceedings initiated by the respondents.

9. The scope of power under Section 482 CrPC has been explained in a series of decisions by this Court. In *Nagawwa v. Veeranna Shivalingappa Konjalgi* [1976 (3) SCC 736], it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate issuing process against the accused could be quashed under the following circumstances: (SCC p. 741, para 5)

"(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their



face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

10. In *State of Haryana v. Bhajan Lal* [1992 Supp. (1) SCC 335], a question came up for consideration as to whether quashing of the FIR filed against the respondent Bhajan Lal for the offences under Sections 161 and 165 IPC and Section 5(2) of the Prevention of Corruption Act was proper and legal. Reversing the order passed by the High Court, this Court explained the circumstances under which such power could be exercised. Apart from reiterating the earlier norms laid down by this Court, it was further explained that such power could be exercised 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. However, this Court in *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [1995 (6) SCC 194] held (at SCC p. 209, para 23) that "at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an inquiry as to the probability, reliability or genuineness of the allegations made therein".

11. In *Pratibha Rani v. Suraj Kumar* [1985 (2) SCC 370], the question arose that when the civil as well as the criminal remedy is available to a party, can a criminal prosecution be completely barred. In this case, the matter related to the *stridhan* property. The complainant alleged that her husband, father-in-law and other relatives misappropriated her jewellery and other valuable articles



entrusted to them by her parents at the time of marriage. The complainant alleged that these dowry articles were meant for her exclusive use and that the accused misbehaved and maltreated her and ultimately, he turned her out without returning the dowry articles. The accused filed a criminal miscellaneous petition under Section 482 for quashing the criminal proceedings and the High Court quashed the same. The accused contended that the dispute was of a civil nature and no criminal prosecution would lie. Under that circumstance, this Court held in para 21 at pp. 382-83 as under:

"21. There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import."

12. This Court in the case of Indian Oil Corpn. v. NEPC India Ltd. [2006 (6) SCC 736], at page 747 has observed as under :

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre, State of Haryana v. Bhajan Lal, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar v. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd. v.



Mohd. Sharaful Haque. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a



civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

13. The appellant has placed reliance on a decision of this Court in the case of *Uma Shankar Gopalika v. State of Bihar* [2005 (10) SCC 336], at page 338, wherein this Court has observed as follows :

"7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 CrPC which it has erroneously refused."

29. The Hon'ble Supreme Court in the case of *Naresh Kumar and Anr. Vs. State of Karnataka & Anr. [2024 INSC 196]* has held as follows:-

Under these circumstances, we are of the considered view that this is a case where the inherent powers should have been exercised by the High Court under Section 482 of the Criminal Procedure Code as the powers are there to stop the abuse of the process and to secure the ends of justice.

6. *In the case of Paramjeet Batra v. State of Uttarakhand (2013) 11 SCC 673, this Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what*



was held:

“12. While exercising its jurisdiction under Section 482 of the Code 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 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.” (emphasis supplied)

Relying upon the decision in Paramjeet Batra (supra), this Court in Randheer Singh v. State of U.P. (2021) 14 SCC 626, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In Usha Chakraborty & Anr. v. State of West Bengal & Anr. 2023 SCC OnLine SC 90, relying upon Paramjeet Batra (supra) it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.

7. Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in Sarabjit Kaur v. State of Punjab and Anr. (2023) 5 SCC 360. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the



time of making the promise.

8. In the case at hand, the dispute between the parties was not only essentially of a civil nature but in this case the dispute itself stood settled later as we have already discussed above. We see no criminal element here and consequently the case here is nothing but an abuse of the process. We therefore allow the appeal and set aside the order of the High Court dated 02.12.2020. The criminal proceedings arising out of FIR No.113 of 2017 will hereby stand quashed.

30. Learned Senior Counsel for the opposite party No. 2 has relied upon the judgment of Hon'ble Supreme Court in the case of ***Indian Oil Corporation v. NEPC India Ltd.*** reported in ***2006 (6) SCC 736*** and argued that the Civil as well as criminal litigation case can continue with regard to the same subject-matter.

31. From the discussions made above, following are the admitted facts:

(i) The complainant has not made any averment that there is any fraudulent or dishonest inducement having been made by the petitioners pursuant to which he made the advance.

(ii) The petitioners are the owners of the property in question and are therefore competent to enter into an agreement to sell and could transfer the title in the property to the complainant.

(iii) No case for prosecution under Section 420 of the



Indian Penal Code is made out as the ingredients of Section 420 of the Indian Penal Code are lacking. The complaint has been filed at Hajipur though from the reading of the complaint, it appears that the agreement dated 07.05.2022 was admittedly entered into between the parties at NOIDA and the property is situated at Mohalla Juran Chapra in Muzaffarpur. Therefore, the Hajipur district Court had no jurisdiction to entertain the complainant as no part of cause of action has arisen within the territorial jurisdiction of Hajipur.

(iv) The Complainant failed to make the payment to the petitioners within 180 days as agreed by the complainant in the aforementioned agreement. The breach of contract is because of non-performance of the part of the agreement by the complainant as he failed to make the entire payment within the period agreed between the parties.

32. In my opinion, from the reading of the complaint even if the allegations levelled therein are taken at their value and accepted in their entirety, no *prima facie* case of cheating is made out as alleged against the petitioners.

33. The complainant has himself failed to make the payment and is abusing the process of the court by initiating the present criminal proceeding with malafide intent for wreaking



vengeance upon the petitioners that too by filing a case at a place having no jurisdiction over the matter.

34. The contention of the learned Senior Counsel for the opposite party No. 2 that both civil as well as criminal case can continue in the facts of the present case is fit to be rejected.

35. Therefore, from the facts available on record and considering the law laid down by the Hon'ble Supreme Court in the case of *Murari Lal Gupta Vs. Gopi Singh (supra)*, *Ravindra Kumar Madhanlal Goenka & Anr. (supra)* and *Naresh Kumar and Anr. Vs. State of Karnataka & Anr. (supra)*, I am of the opinion that no criminal offence of cheating is made out against the petitioners and the criminal case is fit to be quashed.

36. In view of the above, this application is allowed.

37. The entire criminal prosecution of the petitioners including the cognizance order dated 20.05.2023 passed by learned JM 1st Class-cum-A.M, Vaishali at Hajipur and the Complaint Case No. 342 of 2022 is hereby quashed.

(Sandeep Kumar, J)

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