

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1013 of 2024

Arising Out of PS. Case No.-494 Year-2022 Thana- BARUN District- Aurangabad

Soni Gupta, Wife of Vinod Prasad, Resident of Village - Kasmar, P.S.-
Pratapapur, District - Chatra, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Department of Home, Bihar, Patna. Bihar
2. The Director General of Police, Bihar, Patna. Bihar
3. The Inspector General, Magadh Range, Gaya Bihar
4. The Superintendent of Police, Aurangabad Bihar
5. The Officer-in-charge, P.S.- Barun, District - Aurangabad. Bihar
6. Kamal Kishore Gupta, Son of Pannalal Gupta Proprietor of Shivdas Trading, Resident of Village - Barun Bazar, P.S.- Barun, District - Aurangabad, Bihar
7. The Investigation officer of Barun P.S. Case No. 494 of 2022, P.S.- Barun, District - Aurangabad Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Vikash Kumar Pankaj, Advocate
For the Respondent/s : Mr.AAG.12

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 06-02-2025 1. The petitioner has filed the instant writ petition

under Article 226 of the Constitution for the following reliefs:-

“I. For issuance of appropriate writ/s, order/s, in nature of Writ of Certiorari to set aside the Order dated 27.09.2022 (Annexure -P/1) in Complaint No. 778 / 2022 passed by Ld. Chief Judicial Magistrate, Aurangabad in a mechanical & a routine manner in teeth of the guidelines of the Hon'ble Supreme Court laid down in Priyanka Shrivastava Vs. The State of UP: 2015(6) SCC 287 and also by overlooking the record; whereby & wherein Respondent No.4 &5 has been directed under section 156(3) Cr.P.C. to lodge the aforesaid complaint as First Information Report (FIR) and conduct investigation thereupon.



II. For issuance of appropriate writ/s, order/s, in nature of consequential Writ of Certiorari to set aside the FIR in Barun P.S. Case No. 494 of 2022 as the same has been lodged in pursuant to the directions contained in the aforesaid Order dated 27.09.2022 (Annexure -P/1) issued under section 156(3) of the Criminal Procedure Code by the Ld. Chief Judicial Magistrate, Aurangabad also in a routine and mechanical matter in teeth of the guidelines of the Hon'ble Supreme Court laid down in Priyanka Shrivastava Vs. The State of UP: 2015(6) SCC 287 wherein, the Hon'ble Apex Court categorically held that an application under section 156(3) of Cr.P.C must be preceded with an application under section 154(1) & (3) of the Cr.P.C. Moreover, the dispute in Barun P.S. Case No. 494 of 2022 is primarily purely civil in nature of money dispute wherein, the informant by the present criminal proceeding has purportedly tried to give it a flare of crime and has incorrigibly played with the sanctity of law & judicial proceeding.

III. For issuance of appropriate writ/s, order/s, in nature of consequential Writ of Certiorari to set aside the Complaint No. 778/2022.”

2. Briefly stated, the background facts for filing the instant writ petition is as follows:-

3. The Respondent No. 6 filed an application before the learned Chief Judicial Magistrate, Aurangabad which was registered as Complaint Case No. 778 of 2022 with a prayer to send the said complaint under Section 156 (3) of the Cr.P.C. to the jurisdictional police station for treating the same as FIR



alleging, inter alia, that the Respondent No. 6 is the owner of Shivdas Trading Company dealing with the business of purchasing paddy from the farmers directly and after converting paddy to rice, sell the same to the intending purchasers. It is alleged that on 1st of October, 2021, the petitioner came to his shop and purchased 2398.30 quintal of paddy at the rate of Rs. 1575/- per quintal amounting Rs. 37,77,322/- and the said consignment was delivered by 9 trucks to the place of the business of the petitioner. Out of the total consideration money, the petitioner paid Rs. 10 Lakhs through different transactions and a sum of Rs. 27,77,322 remained unpaid. The Respondent No. 6 asked the petitioner to make payment of the said money but he refused to pay the same. Subsequently, the Respondent No. 6 sent a legal notice to the petitioner on 29th of July, 2022, requesting him to make payment of the balance money within certain period of time, but the petitioner refused and neglected to pay the same. The learned Chief Judicial Magistrate, Aurangabad sent the said complaint under Section 156 (3) of the Cr.P.C. to the jurisdictional police station directing the SHO, Barun Police Station to treat the same as FIR and initiate a specific case against the petitioner vide order dated 27th of September, 2022. Police received the said complaint and



registered Barun P.S. Case No. 494 of 2022, dated 14th of November, 2022 under Sections 406, 420, 120B and 504 of the IPC against the petitioner and took up the case for investigation.

4. It is contended on behalf of the petitioner that while passing an order under Section 156 (3) of the Cr.P.C., the learned Chief Judicial Magistrate did not take into consideration the guidelines of the Hon'ble Supreme Court in ***Priyanka Srivastava & Anr. vs State Of U.P. & Ors.***, reported in **2015 (6) SCC 287**. The learned Chief Judicial Magistrate also did not consider that the alleged transaction between the petitioner and the private Respondent No. 6 was an out and out sale and non-payment of a part of consideration money. Therefore, the property in question which was allegedly sold by the Respondent No. 6 in favour of the petitioner was not entrusted in any manner in favour of the petitioner and question of dishonest misappropriation of the same does not arise at all. Therefore, the ingredients of offence under Section 406 of the IPC was upset.

5. Similarly, it is the specific case of the Respondent No. 6 that the petitioner paid a sum of Rs. 10 Lakhs out of Rs. 37,77,322/- and a sum of Rs. 27,77,322/- was due. Even if the contents of the FIR is accepted in its face value, the ingredients



of offence under Section 420 of the IPC cannot be said to be established on the ground that there was no dishonest or fraudulent intention of the petitioner from the very beginning of transaction to deceive the Respondent No. 6 to sell paddy in favour of him.

6. The Respondent No. 4, Superintendent of Police, Aurangabad has filed a counter affidavit against the aforementioned writ petition contending, *inter alia*, that after institution of writ petition, Superintendent of Police, called for a report from the Sub-Divisional Police Officer – I, Aurangabad and on the basis of the investigation so far, the SDPO submitted his report that the petitioner is a resident of village Kasma within the Police Station- Pratapapur, Chatra in the State of Jharkhand. The Respondent No. 6 used to carry on business as a proprietor of Shivdas Trading at Barun Bazar in the District of Aurangabad, Bihar. During investigation, it was learnt that the petitioner had business relationship with Respondent No. 6 and she purchased 2398.30 quintal paddy from him. The petitioner was interrogated during investigation and it was *prima facie* found that the allegation made by the Respondent No. 6 is true. It is also found from the counter affidavit submitted by the SDPO – I, Aurangabad that over the same incident, police



submitted Charge-sheet No. 260 of 2024, dated 14th of June, 2024 before the Jurisdictional Magistrate in the State of Jharkhand.

7. Thus, the counter affidavit suggests that there are two criminal cases instituted against the petitioner. One in the State of Jharkhand and another in Barun Police Station, Aurangabad on the basis of the impugned order passed by 27th of September, 2022 by the learned Chief Judicial Magistrate, Aurangabad.

8. I have heard the learned Advocate for the petitioner and the learned Advocates for the State-Respondents as well as Respondent No. 6.

9. It is asserted from the record that over the same offence, two cases are pending in two States. Barun P.S. Case No. 494 of 2022 is pending before the learned Chief Judicial Magistrate at Aurangabad, in the State of Bihar and Charge-sheet No. 260 of 2024 dated 14th of June, 2024 is pending for trial in the State of Jharkhand. From the counter affidavit filed on behalf of the Respondent No. 2, the name of the Court where Charge-sheet No. 260 of 2024 dated 14th of June, 2024 filed by the Pratapapur Police Station in the State of Jharkhand, has not been asserted and stated.



10. Sub-Section (4) of Section 181 of the Cr.P.C.

states:-

“Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.”

11. From the complaint made by Private Respondent No. 6 under 156 (3) of the Cr.P.C., it is ascertained that the alleged offence of criminal breach of trust and cheating was committed within the jurisdiction of Barun Police Station. Again, the property, i.e., paddy, was received and retained within the jurisdiction of Pratapapur Police Station in the State of Jharkhand. Therefore, the alleged offence can be enquired into and tried either in a Court having jurisdiction in the State of Bihar or Jharkhand.

12. However, a person cannot be tried twice for the same offence. In both the places, i.e., Barun Police Station, police registered a case under Sections 406, 420 and 120B of the IPC and in Jharkhand also police submitted charge-sheet over the same incident under Sections 406, 420 and 34 of the IPC



alleging the same offence against the accused/petitioner and another person. Therefore, either of the case is maintainable and another case is liable to be dropped.

13. However, since another case is pending in different State i.e., in Jharkhand, the High Court of Judicature at Patna, Bihar has no jurisdiction to pass any order with regard to the case pending in the State of Jharkhand.

14. At the same time, this Court is of the opinion that the points raised by the petitioner that the complaint filed by the Respondent No. 6 before the learned CJM, Aurangabad was not filed in accordance with the guidelines laid down by the Hon'ble Supreme Court in *Priyanka Srivastava* (supra) or that in respect of sale of property and non-payment of consideration price, no criminal liability can be attributed under Sections 406 or 420 of the IPC in view of the decision in *Delhi Race Club (1940) Ltd. & Ors., v. State of U.P. & Anr.*, reported in *(2024) 10 SCC 690*, on the ground that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution



of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core, there can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it.

15. This Court is not in a position to consider the above stated legal aspects to come to a finding as to whether the order passed by the learned Chief Judicial Magistrate, Aurangabad on 27th of September, 2022 in Complaint Case No. 778 of 2022, treating the complaint filed by the Respondent No. 6 as FIR and directing the police to institute a case, and subsequent institution of Barun P.S. Case No. 494 of 2022, dated 14th of November, 2022, in view of pendency of another criminal case over the same offence in the State of Jharkhand.

16. For the reasons stated above, the instant writ petition is disposed of without passing any order.

17. However, the petitioner is at liberty to raise the issue by filing a fresh writ petition on the similar cause of action after dropping either of the criminal cases pending against her.

(Bibek Chaudhuri, J)

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