

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46440 of 2023

Arising Out of PS. Case No.-315 Year-2022 Thana- DEV District- Aurangabad

NARENDRA KUMAR S/O LATE MADAN KUMAR TIWARY VILLAGE
EARKI P S DEO DISTRICT AURANGABAD

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. AMRENDRA KUMAR S/O LATE MADAN KUMAR TIWARY VILLAGE
EARKI P S DEO DISTRICT AURANGABAD

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Binod Kumar, Adv.
For the Opposite Party/s : Mr. Dilip Kumar No. 1

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

6 07-02-2025 Heard Mr. Binod Kumar, learned counsel for the petitioner and learned APP as also learned counsel for the informant.

2. The petitioner is apprehending his arrest in connection with Deo P.S. Case No. 315 of 2022 dated 01.12.2022 for the offence under sections 406, 420, 467, 468, 471, 474/34 of the IPC lodged by the informant, Amrendra Kumar.

3. As per the prosecution story, the complainant/informant alleged that the petitioner is own brother who preferred Title Suit No. 213 of 2022 and 232 of 2022 and upon receipt of the notice, it was found that 43 decimals of land



has been sold by him to one Basanti Devi for a consideration amount of Rs. 12, 36,000/-. The purchasers have also been made accused in the case and again on 30.09.2019, 26 decimals of land was sold. The same being done through forged deeds and left with no option, the complaint.

4. Earlier, learned Senior Counsel, Mr. Krishna Prasad Singh appeared in the matter and the submissions before this Court was that certain portion of land was sold from the joint possession due to his personal reason which followed the Partition Suit No. 213 of 2022 and 232 of 2022 and as the complainant/informant had appeared, both of them wanted the case to travel to Patna High Court Mediation Centre.

5. Accordingly, *vide* an order dated 06.09.2023, a Co-ordinate Bench of this Court referred the matter to the Patna High Court Mediation Centre. From the Co-ordinate Bench, the case travelled to this Court whereafter, the petitioner also chose to get an NOC from the office of learned Senior Counsel and whereafter, handed over the *Vakalatnama* to Mr. Binod Kumar, learned counsel who is now representing him.

6. The interim reports of the Mediator show that both the parties moved towards an amicable settlement and the belief of the Mediator was that the same is going to be resolved and as



such, wanted further time *vide* report dated 29.02.2024 and 28.06.2024. The second report dated 28.06.2024 is incorporated hereinbelow:-

“The parties have agreed to settle their dispute amicably in presence of their learned counsels. The parties need further time to draw the terms of settlements of their disputes.

Accordingly, the parties along with their learned counsels requested for making a request for extension of time from the Hon’ble High Court.”

7. As recorded above, later the counsels changed and thereafter, the mind of the petitioner also changed. A fresh plea has now been taken herein that since a Partition Suit is pending and subsequently, the complainant has also filed Title Suit No. 07 of 2023 for annulment of the sale deeds, the legality of the sale deed can considered only by a competent Civil Court.

8. This stand is contrary to the submissions of learned counsel for the complainant/informant that the parties were on the verge of getting the matter settled, which is supported by the learned Mediator’s report. The new counsel submits that neither the consent was given to the learned Senior Counsel nor did the petitioner ever appeared before the Mediator, so the interim



report has to be ignored.

9. On the one hand, there was submission of the learned Senior Counsel based on the instruction he got earlier followed by the statement of the learned counsel for the complainant/informant that the matter was about to be resolved which is supported by the Mediator's interim report that they are on the verge of getting the matter settled, on the other hand, learned counsel for the petitioner who has just stepped in submits that the settlement issue was never considered nor did the petitioner ever appeared before the Mediator.

10. This Court has taken note of the fact that all these facts that have been put forward by way of submissions but the same has not been incorporated in supplementary petition by way of affidavit. In that case, this Court would have called for report from the Mediator to ascertain whether the petitioner appeared before her or not so that appropriate steps be taken in case a false affidavit has been made.

11. Learned counsel for the petitioner in support of grant of anticipatory bail has placed reliance in the case of **V. Y. Jose & Anr vs. State of Gujarat & Anr** as reported in **2009(2) PLJR (SC)1** to support that in a case which is of civil in nature, the criminal proceeding should not be entertained. He has taken



this Court to paragraphs-15 to 17 which read as follows:-

“15. There exists a distinction between pure contractual dispute of civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt what- soever that in absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.

We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Indian Penal Code is existence of an intention of making initial promise or existence thereof from the very beginning of formation of contract.

Section 482 of the Code of Criminal Procedure, saves the inherent power of the court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.

It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.

16. In *Hira Lal Hari Lal Bhagwati vs. CBI [(2003)5 SCC 257]*, this Court held:-

"40. It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate



contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, there-fore, it rightly paid the necessary du- ties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Indian Penal Code does not arise. We have read the charge-sheet as a There is no allegation in the first information report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrep. resentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what were the roles played by the appellants in the alleged offence. The appellants, in our view, could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a non-profit organisation and, therefore, the allegations against the appellants levelled by the prosecution are unsustainable. The Vivad Samadhan Scheme along with Duncan and Sushila Rani judgments clearly absolve the appellants herein from all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been pounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process.

*[See also **Indian Oil Corporation vs. NEPC India Ltd. & Ors.** [(2006)6 SCC 736].*

*17. Recently, in **Vir Prakash Sharma vs. Anil Kumar Agarwal** [(2007)7 SCC 373],*



noticing, inter alia, the aforementioned decisions, this Court held:-

"13. The ingredients of Section 420 of the Penal Code are as follows:-

(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

No act of inducement on the part of the appellant has been alleged by the respondent. No allegation has been made that he had an intention to cheat the respondent from the very inception.

12. Learned counsel for the petitioner submits that the submissions put forward by him coupled with judgment of the Hon'ble Supreme Court clearly show that the petitioner is entitled for the relief.

13. On the other hand, learned counsel for the complainant submits that not only earlier the consent was given for the matter to be sent to the Mediation Centre before the Coordinate Bench, the petitioner duly appeared before the Mediator as would reflect from the interim report. In continuation of that, he got land relating to this case (26 decimals) transferred in his name from Basanti Devi (co-accused) vide sale deed dated 23.02.2024 which clearly show that not only the complaint put forward against him is genuine,



it was a sham transfer and in that background, he immediately got it back, so that the same be handed over to the complainant. However, now on ill advice, he is singing a different tune.

14. Be that as it may, so far as this case is concerned, the complainant has alleged that through forged transaction, he has transferred the land to Basanti Devi and upon realizing that he may suffer promptly got it back through another sale deed dated 23.02.2024.

15. The contention of the learned counsel for the petitioner that he had never given any instruction to the learned Senior Counsel about an amicable settlement and thus, the matter may be sent to Mediation Centre is clearly falsified by the fact that the Mediator who is an independent person in two of its interim report has clearly recorded that the parties are on the verge of settlement. This Court thus has reason to believe that false submission has been made by the learned counsel for the petitioner who has now been substituted in the place of the learned Senior Counsel.

16. So far as the order of the Hon'ble Apex Court is concerned, each case has a different facts and circumstance. In that case, the fact was that the complainant had not made any allegation regarding the false denial or bad intention on the part



of appellant at the time of inspection of the machine and taking note of the said fact the Hon'ble Apex Court interfered. However, here the case is entirely different, the petitioner from the joint possession unilaterally transferred the land which he admitted before the Co-ordinate Bench through the learned Senior Counsel. Thereafter, on his consent, the matter travelled to Mediation Centre, there the matter was moving towards a positive side when the change of counsel took place and the petitioner, thereafter, also changed the entire track. The return of the land from Basanti Devi to him clearly shows that it was a sham transfer and purpose definitely was to cheat his brother. In that background, this Court safely holds that the criminal intent in the mind of the petitioner was always there. Thus, the order of the Hon'ble Apex Court is not applicable in the present case, and in that background, the prayer for grant of anticipatory bail cannot be extended to him.

17. The anticipatory bail application of the petitioner is rejected. The provisional bail granted to him on 06.09.2023 by the Co-ordinate Bench stands revoked.

18. If the petitioner fails to surrender within seven days from today, the Superintendent of Police, Aurangabad shall ensure that he is taken into custody immediately.



19. Let a copy of this order be sent to the office of the Superintendent of Police, Aurangabad for his perusal and needful.

(Rajiv Roy, J)

perwez

U		T	
---	--	---	--

