

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.3852 of 2018

Arising Out of PS. Case No.-27 Year-2017 Thana- DANAPUR District- Patna

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Manish Priyadarshi Son of Krishna Bihari Prasad Sinha, Plot No. 11,
Vishwasaraiya Nagar, Bailey Road, Police Station- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sohail Khan, Son of Late Mukhtar Khan, Executive Officer, Helios Corporation Ltd. Maharani Complex, Bypass Road, Anishabad, Police Station- Bypass, Police Station and District- Patna.

... .. Opposite Party/s

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Quashing of cognizance order – Section 92 (4) of the Indian Evidence Act, 1872 – the terms of registered documents cannot be altered, rescinded or varied by an unregistered documents – section 54 of the Transfer of the Property Act, 1882 – after execution of registered sale deed, the purchaser/transferee of the property became the absolute owner of the property – section 31 of the specific relief act – a registered sale deed can only be cancelled by way of filing a civil suit for cancellation of such instrument – non-payment of a part of the sale price would not affect the validity of the sale - To make out an offence under section 420 of the I.P.C. it is necessary that there was an intention to commit fraud right from the inception – distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test – for constituting an offence under section 467 & 468 of the I.P.C. condition precedent is making a false document – if the sale deed is not a false document, there is no forgery, and as such section 467 & 468 of the I.P.C. is not attracted – allegations made in the F.I.R. give rise to civil dispute but he informant has given it the colour of criminal

offence, and as such permitting the prosecution to continue against the petitioner shall amount to abuse of the process of criminal court.

Cases relied upon:

- x. (2020) 7 SCC 366 (Dahiben v. Arvind Bhai Kalyanji Bhanusali)
- xi. (1993) 3 SCC 573 (Vidhyadhar vs. Manikrao)
- xii. (2009) 8 SCC 751 (Mohammed Ibrahim & Ors. vs. The State of Bihar & Anr.)
- xiii. (2018) 7 SCC 581 (Sheela Sebastin vs. R. Jawaharaj)
- xiv. (2007) 12 SCC 1 (Mohan Goswami & Anr. State of Uttaraanchal & Ors.)
- xv. (2015) 9 SCC 96 (Robert John D’Souza & Ors. vs. Stephen vs. Gomes & Anr.)
- xvi. (2021) 5 SCC 524 (Kapil Agarwal vs. Sanjay Sharma)
- xvii. (2015) 12 SCC 420 (Mehmood UI Rehman vs. Khazir Mohammad Tunda & Ors.)
- xviii. 2021 SCC Online SC 206

Cases Referred:

- i. (200) 4 SCC 168 (Hridaya Ranjan Prasad Verma & Ors. vs. the State of Bihar & Anr.)

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Appearance :

For the Petitioner/s : Mr.Sanjeev Ranjan
Mr. Bhim Kumar Yadav
For the Opposite Party/s : Mr. Shyameshwar Dayal, A.P.P.
For the Opposite Party No. 2: Mr. Sunil Kumar , Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 22-01-2024

1. The present application has been filed for quashing the order of cognizance dated 21.07.2017 taken by learned Additional Chief Judicial Magistrate, Danapur under Sections 467, 468, 419, 420, 506 & 34 of the Indian Penal Code in connection with Danapur P.S. Case No. 27 of 2017.

2. The First Information Report lodged by the informant claiming himself to be the Executive Officer of Helios Group of Companies alleging therein that pursuant to agreement for sale dated 01.06.2012 executed between Nikhil Priyadarshi and Manish Priyadarshi on behalf of Priyadarshi Hotel & Resort Ltd. and Sanjay Singh, Chairman of Helios



Group of Companies for sale of land of the informant -company situated at Khagaul Road, Danapur appertaining to Khata No. 104, Khesra Nos. 103 & 104, Khata Nos. 109 & 106, Tauzi No. 5061, Thana – Danapur, District -Patna measuring 25 Katha, the sale deeds were registered on 18.02.2014 & 06.03.2014 at Danapur Sub Registry Office with Nikhil Priyadarshi and Sanjay Kumar Singh. The petitioner / accused persons gave different cheques worth Rs. 17,25,00,000/- as consideration amount and promised that the cheque amount would be encashed on demand. It has been alleged that the company repeatedly enquired from Nikhil Priyadarshi as to whether the money has come to his account or not in reply to which Nikhil Priyadarshi told the informant to wait for some time as he would himself inform the company after depositing the amount. The informant became suspicious that the accused persons with intention to commit fraud had given cheques and were trying to re-sale the land in favour of other persons for which they were looking for customers. However, on the basis of understanding arrived at between the Chairman of Helios Group and Nikhil Priyadarshi, a deed of cancellation was signed for cancelling the registered sale deed. Even after execution of deed of cancellation the petitioner claiming himself as the owner of the



land, has entered into agreements with other customers. A copy of such agreement executed by Nikhil Priyadarshi to one of the customers was made available to the informant. Thereafter, the informant had a firm belief that the accused persons in a planned manner have created forged document and are trying to re-sale the land claiming themselves to be the owner. It has further been alleged that the accused persons are trying to take forceful possession over the land by sending their musclemen on the basis of forged documents and have also threatened the Guard of the company posted on the land of dire consequences. The accused persons / petitioner on the basis of forged document is trying to dishonestly sell the piece and parcel of land with a view to digest the money of the company / informant by executing agreement with different persons.

3. Based on the written report of the informant / Sohail Khan, a formal F.I.R. was registered bearing Danapur P.S. Case No. 27 of 2017 against Nikhil Priyadarshi and Manish Priyadarshi for the offences under Sections 467, 468, 419, 420, 506 read with Section 34 of the I.P.C. The Police after investigation submitted charge sheet. Learned A.C.J.M., Danapur took cognizance vide order dated 21.07.2017 for the offences under Sections 467, 468, 419, 420, 506 & 34 of the



I.P.C. which has been impugned in the present application.

4. Learned counsel for the petitioner submits that in pursuance of the agreement to sale, three sale deeds were executed / registered. One such registration was of 5 Katha of land, which was registered on 18.02.2014 vide Deed No. 1959 in favour of M/s Priyadarshi Resort Hotel Ltd. through its Managing Director Nikhil Priyadarshi. The registered sale deed clearly mentions that entire consideration money of Rs. 2,81,25,000/- was received by the vendor - Sanjay Kumar Singh on behalf of Helios Corporation Ltd. On the same day 2nd sale deed was registered in favour of M/s Priyadarshi Resort Hotel Ltd. vide Deed No. 1339 in respect of 5.81 Katha of land for total consideration amount of Rs. 3,26,82,000/-. The registered sale deed recites that entire consideration amount was received by the vendor and the vendor made endorsement on the sale deed in token of admitting execution. The chirkut was handed over by the vendor and the original sale deed was delivered to the purchaser on submission of chirkut in the office of Sub Registrar.

5. The 3rd sale deed was registered on 06.03.2014 in favour of Manish Priyadarshi (petitioner) exclusively in respect of 14.62 Katha of land vide registered deed no. 1558. In this



sale deed also it has been mentioned that entire consideration amount has been paid in cash to the vendor after exchange of cheque. The vendor handed over the chirkut to the purchaser and the original sale deed was handed over to the purchaser on presentation of chirkut in the office of Sub Registrar

6. It has further been submitted that the sale consideration amount has been paid in cash after exchange of cheque. The claim of the informant / opposite party no. 2 that only part payment of sale consideration amount was paid is not tenable. The deed of cancellation which is an unregistered document on the face of it is fake and forged document which has been created by the informant as part of a conspiracy to grab the above mentioned land. Part payment cannot be a ground for cancellation of the sale deed.

7. In terms of Section 92 (4) of the Evidence Act the terms of registered document cannot be altered, rescinded or varied by an unregistered document and therefore a purely civil dispute has been given colour of criminal offence. The present F.I.R. has been lodged with ulterior motive to wreak vengeance with the petitioner in order to settle personal grudge.

8. Learned counsel next submitted that the present F.I.R. has been filed in abuse of the process of criminal court in



order to recover money from the petitioner by arm twisting. From bare reading of the First Information Report it would be evident that the opposite party no. 2 has claimed that by virtue of unregistered deed of cancellation right, title and interest of the petitioner in the property got extinguished and the property is reverted back to the informant i.e. to the company. On the contrary; right, title and interest of the petitioner got absolute after execution of registered sale deed in terms of Section 54 of the Transfer of Property Act and the purchaser / transferee of the property became the absolute owner of the property. The title of the property under no circumstance can be extinguished by an unregistered deed of cancellation. Once a sale deed has been executed and registered, there is no provision for registration of document i.e. cancellation of registered sale deed under the Registration Act and the parties can only by way of filing a suit under Section 31 of the Specific Relief Act can seek a declaration for cancellation of such instrument. The informant has not taken recourse to the provision of law for cancellation of sale deed.

9. The basis for execution of deed of cancellation as mentioned therein is non payment of entire sale consideration amount or only part payment of sale consideration is



misconceived as part payment cannot be a ground for cancellation of sale deed and the only recourse / remedy for the petitioner is to file a suit for recovery of unpaid sale consideration amount. The non payment of remaining sale price should not invalidate the sale. He relies upon a judgment of the Hon'ble Supreme Court reported in (2020) 7 SCC 366 Dahiben v. Arvindbhai Kalyanji Bhanusali. The Hon'ble Supreme Court in paragraph 29.8 of the aforesaid judgment has taken note of its earlier judgment reported in (1993) 3 SCC 573 Vidhyadhar versus Manikrao in which it has been held that the words "price paid or promised or part -paid and part- promised" indicates that actual payment of whole of the price at the time of execution of the sale deed is not sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to transferee under the transaction. The non -payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price



either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

10. He further argued that no offence under Section 467 or 468 of the I.P.C. is made out inasmuch as the petitioner is neither alleged to have altered or tampered with the document or is said to be a maker of a false document as defined under section 464 of the I.P.C. to constitute an offence under Section 467 or 468 I.P.C. In absence of any allegation regarding making a false document or producing false document with intention to cause injury to the informant, no case of forgery is made out. The allegation *per se* does not constitute an offence of forgery. He relies upon the judgment of the Hon'ble Supreme Court rendered in Mohammed Ibrahim & Ors. v. The State of Bihar & Anr. reported in (2009) 8 SCC 751 and Sheela Sebastin v. R. Jawaharaj reported in (2018) 7 SCC 581.

11. He next argued that offence of cheating under Section 420 I.P.C. is also not made out as there is no allegation of deceiving any person fraudulently or dishonestly to deliver any property to any person which is the requirement to constitute an offence under Section 420 I.P.C. Further, there is no allegation in the F.I.R. that the petitioner at the time of



entering into execution of sale deed had fraudulent or dishonest intention to cheat the informant / company. He relies upon Inder Mohan Goswami & Anr. v. State of Uttaranchal & Ors. reported in (2007) 12 SCC 1 and Robert John D'Souza & Ors versus Stephen V. Gomes & Anr. reported in (2015) 9 SCC 96. The F.I.R. has been lodged after three years of the execution of the sale deed and prolonged silence itself shows the malafide intention of the informant.

12. The Hon'ble Supreme Court in the case of Kapil Agarwal versus Sanjay Sharma reported in (2021) 5 SCC 524 has held that criminal proceeding are being taken recourse to as a weapon of harassment against the purchaser and the Court could be extra vigil in not permitting the criminal proceeding to generate into a weapon of harassment.

13. He next argued that the order taking cognizance shows complete non application of mind as there is no satisfactory reason recorded by the Magistrate for forming an opinion that offence in question is made out for the purpose of issuing summon. The failure to assign brief reason renders the order vulnerable as held in the case of (2015) 12 SCC 420 Mehmood Ul Rehman versus Khazir Mohammad Tunda & Ors.

14. Learned counsel for the opposite party no. 2 argued



that argument advanced by the petitioner and the materials on record shall be examined during the course of trial. Whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. To support his arguments, he relies upon the judgment of the Hon'ble Supreme Court reported in 2021 SCC Online SC 206. Referring to paragraph- 31 of the said judgment, learned counsel submits that even if civil remedy is available to the informant, the petitioner cannot be absolved from criminal liability. He relies upon another judgment reported in 2017(4) PLJR SC 207 but the same is not applicable in the facts of the case.

15. Upon hearing learned counsel for the petitioner, learned counsel for the State and learned counsel appearing for the Opposite Party No. 2 and from the materials on record the fact which emerges is that the petitioner is purchaser of a piece of land sold by the informant-company for a valuable consideration by way of registered sale deed. In the sale deed executed and registered in favour of the petitioner dated 06.03.2014 the consideration amount for sale is mentioned as Rs. 2,39,86,000/-. There is recital in the sale deed that the vendor would receive the consideration amount through



exchange of cheque. It is the case of the petitioner that entire consideration amount has been paid in cash after exchange of cheque. The deed of cancellation based upon non payment of consideration amount according to the petitioner is forged and fabricated and registered sale deed cannot be cancelled by virtue of any unregistered deed of cancellation.

16. The Hon'ble Supreme Court in the judgment reported in (2020) 7 SCC 366 has held that “ even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction”

17. From perusal of the F.I.R. it appears that no offence much less an offence under Section 420, 467 & 468 of the I.P.C. is made out against the petitioner. To make out an offence under Section 420 of the I.P.C. it is necessary that there was an intention to commit fraud right from the inception. In the First Information Report there was no such intention from the very inception as has been alleged against the petitioner and sale deeds were duly executed and registered.

18. The Hon'ble Supreme Court in Hridaya Ranjan Prasad Verma & Ors. versus The State of Bihar & Anr. reported in (2000) 4 SCC 168 the Hon'ble Supreme Court has held that



distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he has fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning that is, when he made the promise cannot be presumed.

19. Assuming the petitioner failed to pay the consideration amount after exchange of cheque as recited in the registered sale deed shall not constitute an offence under Section 420 of the I.P.C. particularly when there is no allegation in the F.I.R. that from the very beginning the intention of the petitioner was not to keep up his promise. Further for constituting an offence under Section 467 & 468 of the I.P.C. condition precedent is making a false document. In this regard, paragraph



nos. 13 & 14 of the judgment relied upon by the petitioner reported in (2009) 8 SCC 751 Mohammed Ibrahim & Ors. versus The State of Bihar & Anr. is relevant. Paragraph nos. 13 & 14 of the same is being quoted hereinbelow for ready reference:-

“13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or



fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a “false document”, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.”

20. In the entire F.I.R. there is no allegation that the petitioner got the sale deed executed by impersonating the informant / company i.e. owner or falsely claiming to be authorized or empowered by the owner. It is not the case of the informant / company that sale deed executed is a fake / forged document and if the sale deed is not a false document, there is no forgery. As such, Sections 467 & 468 of the I.P.C. are not attracted.

21. Upon going through the allegations made in the F.I.R. and the materials on record, in my opinion, allegations made in the F.I.R. give rise to civil dispute but the informant has given it the colour of criminal offence. As such, permitting the prosecution to continue against the petitioner shall amount to



abuse of the process of criminal court.

22. Accordingly, in order to prevent the abuse of the process of court and to secure the ends of justice, I deem it fit to quash the order of cognizance qua the petitioner.

23. In the result, the order dated 21.07.2017 passed in Danapur P.S. Case No. 27 of 2017 by the learned Additional Chief Judicial Magistrate, Danapur qua the petitioner is hereby quashed.

24. The application stands allowed.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	01-12-2023
Uploading Date	22-01-2024
Transmission Date	22 -01-2024

