IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No 1 of 2024

Arising Out of PS. Case No.-1094 Year-2023 Thana- GAYA MUFASIL District- Gaya

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1. Amit Kumar Singh @ Amit Singh S/O Late Rameshwar Singh R/O House No. 161, Patliputra Colony, P.S- Patliputra, Distt.- Patna, Bihar.
2. Alok Kumar Singh @ Alok Singh S/O Late Rameshwar Singh R/O House No. 161, Patliputra Colony, P.S- Patliputra, Distt.- Patna, Bihar.
3. Nitu Singh W/O Alok Kumar Singh @ Alok Singh R/O House No. 161, Patliputra Colony, P.S- Patliputra, Distt.- Patna, Bihar.

... ... Petitioner/s

Versus

1. The State Of Bihar, Through Principal Secretary, Home, Govt. Of Bihar, Old Secretariat, Patna. Bihar
2. The Principal Secretary, Home, Government Of Bihar, Old Secretariat, Patna Bihar
3. The Director General Of Police, Bihar, Old Secretariat, Patna Bihar
4. The Superintendent Of Police, Gaya Bihar
5. The Officer In Charge, Muffasil Police Station Gaya Bihar
6. Harendra Kumar Singh S/O Late Ram Pravesh Singh R/O Village- Gera, P.S- Mufassil, Dist.- Gaya, Presently Residing At Mahaddipur Kothi, Rana Nagar, P.S- Muffassil, Distt.- Gaya.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Suraj Samdarshi, Sanjay Jha, Simran Kumari, Advocates
For the S t a t e	:	Mr Deepak Kumar, AC to GP IV
For Respondent	:	M/s Anshul, Avinash Kr Singh, Advocates

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CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

CAV JUDGMENT

Date : 06-12-2024

This petition has been preferred by the petitioner seeking the following reliefs:

> ***"i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Mufassil (Gaya) PS Case No 1094/2023 dated 26.10.2023 registered under Sections 406, 420/34 of Indian Penal Code on***

> ***the ground that the same is completely illegal and without any authority of law.***
>
> ***ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents not to take any coercive step against the Petitioners in pursuance of Mufassil (Gaya) PS Case No 1094/2023.***
>
> ***(iii) This Hon'ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioners as per the contents of First Information Report and therefore the Petitioners cannot be subjected to criminal prosecution.***
>
> ***iv) To award the cost of litigation and suitable compensation to the petitioners for the loss and damages caused to them.***
>
> ***v) To grant/award and other relief or reliefs which the Petitioners may be found entitled to in the facts and circumstances of the case."***

2 According to the pleadings, on the basis of written report dated 26.10.2023 made by the informant Harendra Kumar Singh, Mufassil (Gaya) PS Case No 1094 of 2023 has been registered under Sections 406, 420/34 of the IPC against the petitioners herein and other three accused persons. It is alleged by the informant in his written complaint that the present petitioners along with other accused persons called him and informed that Gere Stone Block is going to be auctioned and offered him that he has to participate in the said Gere auction on behalf of their company, namely, Octale Sales Private Limited, Champion Group of Company and Champion Omdev Construction Limited in lieu of share in the aforesaid companies. Allegedly, on the basis of said assurance, the complainant/informant returned back. However, the petitioners and other named persons did not proceed any further with the transaction. Suddenly, some day prior to the auction, they came to his house and requested him to give money for partnership. Upon repeated requests, on 05.01.2015, he deposited a sum of Rs 2.35 crores from his account as well as account of one Amresh Kumar Singh in the two accounts of petitioners' company consequent to which they issued a power of attorney to participate in the auction. On the basis of said power of attorney, he participated in the auction and auction was finalized in the name of Octale Sales Private Limited. On the date of auction also, the informant deposited Rs 1,30,00,000/- by way of demand draft in the office of District Magistrate and the rest amount of Rs 37,50,000/- was also deposited in the account of Octale Sales to be deposited before the District Mining Office. Therefore, a total sum of Rs 4,02,50,000/- was given by the informant but neither did the accused persons refunded the money nor did they give share in the company upon which the informant came to believe that the accused persons have committed cheating and fraud. A legal notice was also sent by the informant in the month of April, 2023 which was never replied, then written complaint was filed by the informant. On the basis of above mentioned facts, FIR has been registered.

3 It is submitted by the learned counsel for the petitioners that the informant only deposited Rs 1.98 crores instead of Rs 2.35 crores which is duly reflected in the books of accounts of Champion Group of Companies for the year, 2015 and the ledger account of the informant Harendra Singh. He further submits that the informant Harendra Singh had obtained minerals from the stone mines from the share of the Champion Group of Companies and, thus, the said amount was duly repaid. Further referring to the books of accounts of Champion Group of Companies for the year 2018 – 2019 (Annexure P/3), it is submitted by the counsel that according to the entries made in the books of accounts in the name of informant Harendra Singh, only Rs 1,52,0340/- has remained balance as insecure loan. Thus, it is well established that the entire money, as alleged by the informant, has already been deposited by way of supplying material to the informant. It is further submitted by him that the lease of the stone block came to an end after five years. Thereafter, this FIR has been lodged merely to harass the petitioners and in order to commit extortion. There is a huge delay in initiating the present proceeding. Admittedly, the entire money was given in the year, 2015 – 2016. The informant has failed to take any steps for recovery of such a huge amount and after a lapse of so many years, he lodged the FIR. Therefore, according to the counsel, only on this ground, the FIR is liable to be quashed.

4 Reliance has been placed by the counsel in the case of ***Hasmukhlal D Vora & Another -Versus- The State of Tamil Nadu,*** since reported in ***(2022) 15 SCC 164, Chanchalpati Das -Versus- The State of West Bengal & Another,*** since reported in ***2023 Supreme Court Cases online SC 650*** and ***Deepak Kumar Shrivas & Another -Versus- The State of Chattisgarh & Others,*** since reported in ***2024 SCC Online SC 158.***

5 Learned counsel further submits that the allegations in the FIR, even if it is admitted on its face value, merely constitutes a civil dispute and does not have any ingredient of any criminal offence like Sections 420 and 406 of the IPC. It is merely civil dispute between both the parties, therefore, on this ground also, the FIR is liable to be quashed. In this regard, reliance has been placed by the counsel in the case of ***Prof R K Vijayasarathi & Another -Versus- Sudha Seetharam & Another,*** since reported in ***(2019) 16 SCC 739, Kunti & Another -Versus- the State of Uttar***

Pradesh & Another, since reported in ***(2023) SCC 109, Paramjeet Batra -Versus- The State of Uttarakhand & Others,*** since reported in ***(2013) 11 SCC 673 and Vinod Natesan -Versus- the State of Kerala & Others,*** since reported in ***(2019) 2 SCC 401***.

6 According to the counsel, bare perusal of the FIR also reveals that it does not contain any averment about the deceit, cheating or fraudulent intention of the accused persons. Therefore, the offence under Section 406 of the IPC is also not prima facie made out. The FIR has been lodged in a completely arbitrary, mala fide and unreasonable manner merely in order to harass and humiliate the petitioners. Therefore, it is liable to be quashed.

7 Learned counsel for Respondent No 6, i e, informant opposes the argument raised by the learned counsel for the petitioners and submits that after registration of the above mentioned FIR, the petitioners firstly made an application under Section 438 of the Cr P C for grant of anticipatory bail before a coordinate Bench of this Court being Cr Misc No 20297 of 2024. In the said application, it was stated by the petitioners that they had supplied paddy to the informant whereas, in paragraph 12 of this writ petition, the petitioners stated that they had supplied stone chips to the informant which clearly shows that they have not come before this Court with clean hands. They have suppressed materials facts. It is further submitted by the counsel that the petitioners fraudulently kept the informant waiting for his share on the plea of proceeds of the auction till 2021 telling him that a complete accounting would be done about investment and profit at the end of mining tenure. In the year 2021, when the informant approached them for his share in the profit then they told him that they had filed a writ petition bearing CWJC No 5454 of 2021 for extension of mining lease. Therefore, the petitioner did not make his complaint at that time. Hence, there is a sufficient cause available to the informant to lodge the FIR belatedly. There is sufficient material available in the FIR for constituting a cognizable offence against the petitioners and as investigation is still going on, therefore, it is prayed that this petition may be dismissed.

8 I have heard learned counsel appearing for both the parties. Perused the entire material available on record.

9 Undisputedly, the alleged transaction of Rs 4,02,50,000/- was of the year, 2015 and 2016. There is also no dispute on the point that mining tenure was completed in the year, 2021. Before completion of the mining tenure, as alleged by the informant, petitioners have not given any share to the informant in their company. If the initial promise for providing share has not been fulfilled by the petitioners then even after the completion of mining tenure why the informant did not avail any legal remedy for recovery of his money, it has not been explained by him in the written report. It does not appear probable that a person having extended a huge loan/advance of Rs 4,02,50,000/- would sit silent for more than 7 – 8 years and not take steps for recovery of the same. Legal notice has also been given by the informant in April, 2023, i e, also after completion of the mining tenure, i e, in the year, 2021.

9 (i) In the case of ***Hasmukhlal D Vora (supra),*** dealing with the case where inspection was conducted in 2013 and show cause was issued in the year, 2016 and the complaint was filed in the year 2017, the Apex Court quashed the criminal prosecution and held in paragraphs 22 and 23 as follows:

> ***"22. There has been a gap of more than four years between the initial investigation and the filing of the complaint, and even after lapse of substantial amount of time, no evidence has been provided to sustain the claims in the complaint. As held by this Court in Bijoy Singh v State of Bihar, inordinate delay, if not reasonably explained, can be fatal to the case of the prosecution. The relevant extract from the judgment is extracted below (SCC p 153, para 7)***
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> ***"7. … Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no averse inference can be drawn but failure to explain the delay would require the Court to minutely***

> ***examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it."***
>
> ***23. In the present case, the respondent has provided no explanation for the extraordinary delay of more than four years between the initial site inspection, the show-cause notice, and the complaint. In fact, the absence of such an explanation only prompts the Court to infer some sinister motive behind initiating the criminal proceedings."***

9 (ii) In the case of ***Chanchalpati Das (supra)***, also dealing with the issue of quashing FIR lodged after 8 years, Hon'ble Apex Court quashed the FIR and held at paragraphs 16 and 17 as under:

> ***"16. As regards inordinate delay in filing the complaint it has been recently observed by this Court in Hasmukhlal D Vora v State of Tamil Nadu that though inordinate delay in itself may not be a ground for quashing of a criminal complaint, however unexplained inordinate delay must be taken into consideration as a very crucial factor and ground for quashing a criminal complaint.***
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> ***17. In the light of afore-stated legal position, if the facts of the case are appreciated, there remains no shadow of doubt that the complaint filed by the respondent-complainant after an inordinate unexplained delay of eight years was nothing but sheer misuse and abuse of the process of law to settle the personal scores***

> ***with the appellants, and that continuation of such malicious prosecution would also be further abuse and misuse of process of law, more particularly when neither the allegations made in the complaint nor in the chargesheet, disclose any prima facie case against the appellants. The allegations made against the appellants are so absurd and improbable that no prudent person can ever reach to a conclusion that there is a sufficient ground for proceeding against the appellants-accused."***

9 (iii) Likewise in the case of ***Deepak Kumar Shrivas (supra),*** the Apex Court quashed the FIR lodged after three years delay and held at paragraph 16 as under under:

> ***"16. For all the reasons recorded above, we are of the view that such criminal prosecution should not be allowed to continue where the object to lodge the FIR is not for criminal prosecution and for punishing the offender for the offence committed but for recovery of money under coercion and pressure and also for all the other reasons stipulated above."***

10 From perusal of books of accounts (Annexure P/3), it appears that in the books of accounts, only Rs 15,20,340/- is mentioned as an insecure loan in the name of the informant, i e, on 31st March, 2018. As pleaded by respondent No 6 in his counter affidavit, it appears that initially petitioners assured respondent No 6 for providing share in the company in lieu of partnership but they did not do so. However, no action has been taken by respondent No 6 for getting share in the company of the petitioners. The counter affidavit of respondent No 6 further shows that later on in the year 2021, he approached the petitioners for his share but it was told by them that complete accounting will be done after completion of mining tenure and the profit of respondent No 6 will also be decided. Thus, it is well established that there is a pure civil dispute between the parties regarding accounting and return of the profit to respondent No 6. It appears that the dispute between the parties is purely civil in nature. Thus, it appears that the dispute between both the parties is purely civil in nature.

10 (i) In the case of ***Prof R K Vijayasarathy (supra),*** dealing with the issue, it is held by the Hon'ble Supreme Court at paragraphs 8 and 29 as follows:

> ***"8. The primary question before this Court is whether the High Court has erred in rejecting the plea of the appellants for quashing the criminal proceedings against them. The question at the heart of the present dispute is whether the averments in the complaint disclose the ingredients necessary to constitute an offence under Penal Code.***
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> ***29. In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to***

> ***constitute offences under the Penal Code. An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the appellants constitutes an abuse of process of court and is liable to be quashed."***

10 (ii) Likewise in the case of ***Kunti (supra),*** the Supreme Court quashed an FIR on the ground that the dispute was purely civil in nature and held at paragraphs 9 and 12 as under:

> ***"9. However, we do not find the need to engage with the grounds as urged, because a perusal of the record in no uncertain terms reflects the dispute as being of a civil nature. This Court recently, in Sarabjit Kaur v State of Punjab, observed that: (SCC p 363, para 13)***
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> ***"13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings."***
>
> ***12. Having regard to the above well-established principles and also noting that the present dispute is entirely with respect to property and more particularly buying and selling thereof, it cannot be doubted that a criminal hue has been unjustifiably lent to a civil natured issue."***

11 The facts and circumstances and the totality of the case, as discussed above and documents annexed with the petition clearly show that the FIR has been lodged after so many years of the alleged transaction of money. Transaction was of the year

2015 and 2016 and FIR has been lodged in the year of 2023. The tenure of mining was completed in the year, 2021. Even after that, no complaint was made by the informant nor any legal remedy has been availed by him for recovery of his money. Legal notice was also sent by him after two years of completion of tenure of the mining lease. The documents annexed with the petition and the counter affidavit of respondent No 6 also show that the dispute between both the parties is purely a civil dispute.

12 Therefore, I do not find any ingredient necessary to constitute a criminal offence under Sections 420 and 406 of the IPC. On the grounds, as discussed earlier, the FIR registered against the present petitioners is liable to be quashed.

13 Accordingly, the FIR of Mufassil PS (Gaya) Case No 1094 of 2023 as well as consequential proceedings initiated on the basis of the said FIR are quashed.

14 This writ petition is allowed.

(Arvind Singh Chandel , J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	28.11.2024
Uploading Date	06.12.2024
Transmission Date	06.12.2024