

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 366 of 2017**

1. Abhay Kumar @ Abhay Kumar Singh
 2. Manikant Sinha @ Manikant Kumar Sinha
- ... Petitioners**

-Versus-

1. The State of Jharkhand
 2. Ram Narayan Thakur
- ... Opposite Parties**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Santosh Kumar Tiwari, Advocate
For the State : Mr. Fahad Allam, A.P.P.
For O.P. No.2 : Mr. Santosh Kumar Jha, Advocate

09/11.06.2024 Heard Mr. Santosh Kumar Tiwari, learned counsel for the petitioners, Mr. Fahad Allam, learned counsel for the State and Mr. Santosh Kumar Jha, learned counsel for opposite party no.2.

2. The prayer in the petition is made for quashing of the entire criminal proceeding including the order taking cognizance dated 16.07.2016 arising out of Pakur Nagar P.S. Case No.391/2015, corresponding to G.R. No.945/2015, pending in the Court of the learned Chief Judicial Magistrate, Pakur.

3. The FIR was registered alleging therein that a notice has been issued to the shopkeeper from Zila Parishad, Pakur for vacating the shop from the super market because one market complex cum marriage hall will be constructed on the said building. After getting the said notice, there was a meeting held between the shopkeeper and they authorized Abhay Kumar Singh (petitioner no.1), who is running a Xerox shop in the said market, for

filing a writ petition before the Hon'ble High Court. They have also given Rs.3,000/- each person to Abhay Kumar Singh, then one writ application being W.P.(C) No.2121/2015 dated 15.05.2015 was filed. Later on 20.07.2015, the order has been passed for maintaining status quo till the next date i.e. on 16.09.2015. It was alleged that Abhay Kumar Singh has withdrawn the case without taken consent of other petitioners. When other petitioners asked about the matter that why you have committed such type of cheating then he has replied that he has committed the cheating and they can do whatever they want to do. Hence, the present FIR was lodged by the informant against Abhay Kumar Singh (petitioner no.1) and his brother Manikant Sinha (petitioner no.2).

4. Learned counsel for the petitioners submits that there is one shop in the name of Manikant Sinha @ Manikant Kumar Sinha (petitioner no.2) in super market, Pakur, however, he has got no concern with the said shop because that was running by his brother Abhay Kumar @ Abhay Kumar Singh (petitioner no.1). The said super market in Pakur was constructed by Zila Parishad, Pakur. He submits that the said Zila Parishad decided to develop the said property and in view of that, notice was issued to all the shopkeepers to vacate the shop. He further submits that after receiving notice, all the shopkeepers met and decided to move before the High Court by way of filing a civil writ petition and petitioner no.1 was authorized for filing the case before the High Court. For the purpose of filing the case, a sum of Rs.3,000/- was contributed by each of the shopkeepers. He submits that pursuant to that the writ petition being W.P.(C) No.2121 of 2015 was

filed before the High Court on 15.05.2015, which was taken up on 20.07.2015 and after issuing notice, direction was given to maintain status quo by the parties. The said case was again taken up on 16.09.2015 and after filing of the counter affidavit, in course of argument, the Court permitted to withdraw the said petition and, accordingly, it was dismissed as withdrawn vide order dated 16.09.2015. He submits that when other petitioners came to know about withdrawal of the said writ petition, they started quarrelling with petitioner no.1. He submits that so far as petitioner no.2 is concerned, he has got no concern as he is the brother of petitioner no.1. He submits that in a very casual manner, charge-sheet has been submitted and innocent persons have been implicated in the case. He submits that without approaching the lawyer, who had appeared before the High Court and withdrawn the case, charge-sheet has been submitted by the Investigating Officer against the petitioners and the learned Court has been pleased to take cognizance. According to him, the order taking cognizance is also not in accordance with law. On these grounds, he submits that the entire criminal proceeding may kindly be quashed.

5. Learned counsel for the State opposed the prayer on the ground that the investigation was done and charge-sheet was submitted and in view of that, the case is made out and this Court may not quash the entire criminal proceeding, at this stage.

6. Learned counsel for opposite party no.2 submits that this petition may kindly be dismissed as investigation was done and in view of that, charge-sheet has been submitted and the learned Court has been pleased to take

cognizance. He submits that in absence of any instruction, the said writ petition was withdrawn. He submits that the High Courts are very slow in quashing of the proceeding, if the case is made out and, as such, this petition may kindly be dismissed.

7. In view of the above submission of the learned counsel for the parties, the Court has gone through the materials on record and finds that in the FIR itself, the entire argument of the learned counsel for the petitioners is stated. Petitioner no.2 is the brother of petitioner no.1 and petitioner no.2 has got no concern with the case because the shop was running by his brother Abhay Kumar @ Abhay Kumar Singh (petitioner no.1). It is further admitted in the FIR itself that in view of the resolution of group, the said writ petition was filed and interim protection was also provided on the first date of hearing. Later on, after filing the counter affidavit by the said Zila Parishad, learned counsel for the petitioners had withdrawn the said writ petition and, accordingly, it was dismissed as withdrawn. In these backgrounds, cognizance has been taken under Section 420/406/120B/34 of the Indian Penal Code. When the resolution was complied with and the writ petition was filed and even interim order was passed by the High Court, the intention from very inception is not made out against the petitioners, which is one of the ingredients to make out the case of cheating and this ingredient is lacking in the case in hand.

8. 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. A reference may be made to the judgment

passed by the Hon'ble Supreme Court in the case of **Mitesh Kumar J. Sha v. State of Karnataka and others**, reported in **(2022) 14 SCC 572**.

Paragraphs 26 and 36 of the said judgment read as under:

"26. *In the instant case, the complaint levelled against the appellants herein is one which involves commission of offences of criminal breach of trust and cheating. While a criminal breach of trust as postulated under Section 405 of the Penal Code, 1860, entails misappropriation or conversion of another's property for one's own use, with a dishonest intention, cheating too on the other hand as an offence defined under Section 415 of the Penal Code, 1860, involves an ingredient of having a dishonest or fraudulent intention which is aimed at inducing the other party to deliver any property to a specific person. Both the sections clearly prescribed "dishonest intention", as a precondition for even prima facie establishing the commission of the said offences. Thus, in order to assess the relevant contentions made by the parties herein, the question whether actions of the appellants were committed in furtherance of a dishonest or fraudulent scheme is one which requires scrutiny.*

Whether sale of excess flats even if made amounts to a mere breach of contract?

36. *This Court in Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 : 2000 SCC (Cri) 786] , has observed : (SCC p. 177, para 15)*

"15. ... that the 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 to 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 had fraudulent or dishonest intention at the time of making the promise."

9. In the landmark judgment in the case of **State of Haryana v. Bhajan Lal**, reported in **1992 Supp (1) SCC 335** regarding exercise of inherent powers under Section 482 Cr.P.C, the Hon'ble Supreme Court has

laid down following categories of instances wherein inherent power of the Court can be exercised in order to secure the ends of justice and the said guidelines are depicted in paragraph 102 of the said judgment, which reads as under:

"102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) 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.

(6) Where there is an express legal bar engrafted in

any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.””

10. Further, for making out a case under Section 420 of the Indian Penal Code, *mens rea* is one of the aspect which is required to be considered. A reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of ***N. Raghavender v. State of Andhra Pradesh, CBI***, reported in ***(2021) 18 SCC 70***. Paragraph 51 of the said judgment reads as under:

"51. It is paramount that in order to attract the provisions of Section 420IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence i.e. (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made."

11. Further on the issue in question, a reference may also be made to the judgment passed by the Hon'ble Supreme Court in the case of ***Vijay Kumar Ghai and others v. State of West Bengal and others***, reported in ***(2022) 7 SCC 124***. Paragraphs 34, 35, 36 and 37 of the said judgment read as under:

"34. Section 420IPC is a serious form of cheating that includes inducement (to lead or move someone to happen)

in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

35. *To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:*

(i) The representation made by the person was false.

(ii) The accused had prior knowledge that the representation he made was false.

(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

36. *As observed and held by this Court in R.K. Vijayasarathy v. Sudha Seetharam [R.K. Vijayasarathy v. Sudha Seetharam, (2019) 16 SCC 739 : (2020) 2 SCC (Cri) 454] , the ingredients to constitute an offence under Section 420 are as follows:*

(i) a person must commit the offence of cheating under Section 415; and

(ii) the person cheated must be dishonestly induced to:

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420IPC.

37. *The following observation made by this Court in Uma Shankar Gopalika v. State of Bihar [Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336 : (2006) 2 SCC (Cri) 49] with almost similar facts and circumstances may be relevant to note at this stage : (SCC pp. 338-39, paras 6-7)*

"6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-BIPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. ... It was pointed out on behalf of the complainant that

the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the consumer forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case, it has nowhere been stated that at the very inception that there was intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420IPC.

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-BIPC 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 482CrPC which it has erroneously refused.””

12. In view of the above case law and considering the dispute in the present case, no case of cheating is made out and the Court has got no hesitation in coming to the conclusion that the present case clearly falls within the ambit of first, third and fifth category of the seven categories enlisted in the said judgment in the case of ***State of Haryana v. Bhajan Lal (supra)*** and in view of that, intervention of this Court is required.

13. Time and again at innumerable instances, the Courts have expressed their disapproval for imparting criminal colour to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute and such an exercise is nothing, but an abuse of process of law, which must be discouraged in its entirety.

14. In view of the above facts, discussions and reasons, the entire criminal proceeding including the order taking cognizance dated 16.07.2016 arising out of Pakur Nagar P.S. Case No.391/2015, corresponding to G.R. No.945/2015, pending in the Court of the learned Chief Judicial Magistrate, Pakur are, hereby, quashed.

15. Accordingly, this petition is allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

Ajay/ A.F.R.