

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1647 of 2018

1. Prakash Jha
2. Holy Cow Pictures Private Limited through its Chairman cum Managing Director, Mr. Prakash Jha
3. Candir Gobind Gidwani
4. Manmohan Shetty @ Manmohan Ramanna
5. Prabhat Jha

.... ...Petitioners

Versus

1. The State of Jharkhand
2. M/s Classic Multiplex Private Limited through Saradindu Sekher Nag duly authorized by the Chairman-cum-Managing Director, Sri Pawan Kumar Singh

..... ...Opp. Parties

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners	: Mr. Umesh Prasad Singh, Sr. Advocate (thorough Video Conferencing) Mr. Jitendra S. Singh, Advocate Ms. Surbhi, Advocate
For the State	:Mr. Prabhu Dayal Agrawal, Spl. P.P.

08/ Dated:-08.02.2024

Notice upon O.P. No.2 has already been effected in the year, 2019 however nobody appeared on behalf of O.P. No.2 till date in view of that this petition is being heard in absence of O.P. No.2.

2. Heard Mr. Umesh Prasad Singh, learned senior counsel (through V.C.) assisted by Mr. Jitendra S. Singh and Ms. Surbhi for the petitioners and Mr. Prabhu Dayal Agarwal, learned counsel for the State.

4. This petition has been filed for quashing the entire criminal proceeding including order taking cognizance dated 10.01.2018 in connection with Complaint Case No. 1499 of 2011, pending in the Court of the learned Chief Judicial Magistrate, Ranchi.

5. The complaint case has been filed alleging therein that the complainant is the duly authorized Agent of the Chairman-cum-Managing Director of M/s. Classic Multiplex Private Limited. It is further alleged that the accused no.1 is the Director-cum-Producer

of Indian film industry whereas the accused no.2 to 5 are the Directors of Holy Cow Pictures Pvt. Ltd. and they are responsible for day to day business of the said company. It is alleged that the accused no.1 intended to establish a multiplex in Jamshedpur and for the same he made requisition before the State Government for allotment of land measuring an area of 3-4 acres and with the consent of the State Government and Tata Steel Ltd., 3.12 acres of land of plot nos. 13, 14 and 17 under khata no.2 under the notified area of Jamshedpur in Ward No.VI was allotted to him. It is further alleged that the accused no.1 approached the Chairman-cum-Managing Director of the complainant-Company, namely, Pawan Kumar Singh and promised him to give 10,000 sq. ft. of super built up area, which is going to be constructed at Jamshedpur. The accused No.1 entered into the written agreement on 13.06.2006 at Civil Court, Ranchi. The Chairman-cum- Managing Director of the complainant got prepared three bank drafts of Rs.20 Lakh in the name of the accused no.1 and handed over the same to the accused No.1, who accepted the same. All the bank drafts were handed over to the accused No.1 in presence of the accused Nos.2 to 5. The complainant further alleged that on 28.05.2009, the Chairman-cum-Managing Director of M/s. Classic Multiplex Pvt. Ltd. went on the construction site to see the premises, which was booked by him, however, he was not allowed to enter into the premises. The Chairman-cum-Managing Director of the complainant enquired from the supervisor, who was present on the work site where he has booked 10,000 sq. ft of super built up area on which the supervisor verified the records and informed him that there is no booking in his name. The Chairman-cum-Managing Director of the

complainant thereafter approached the accused no.1 on 23.06.2009 and the accused no.1 also confirmed that there is no booking in his name..

6. Mr. Umesh Prasad Singh, learned senior counsel for the petitioners submits that the said complaint case was sent by the learned court under section 156 (3) Cr.P.C. for registration of F.I.R and investigation and pursuant to that Kotwali P.S. Case No. 480 of 2009 was registered and the police submitted final form stating the case civil in nature however on the protest petition the learned court has taken cognizance under section 418 of the I.P.C. by order dated 10.01.2018. He further submits that the allegations are made that three bank drafts to the tune of Rs. 20 lakhs were given to the accused no.1 by the O.P. No.2. He further draws the attention of the Court to the supplementary affidavit filed by the petitioners and submits that the document of the State Bank of India, SME Branch, Ranchi has been annexed therein. By referring the letter, learned senior counsel for the petitioners submits that an amount of Rs. 20 lakh with regard to three drafts which is subject matter of the complaint is not issued as yet by the bank and the amount of that drafts is not encashed. By way of referring this document he further submits that in view of that even if it is accepted that any agreement is there that agreement itself is void in the light of Section 25 of the Indian Contract Act, 1872. He further draws the attention of the Court to para 8 of the complaint petition and submits that in the said para itself there is admission that for the breach of agreement if any the present complaint case has been filed. He further submits that O.P. No.2 has already instituted title suit for specific performance being Title Suit No. 107 of 2009 which

is pending in the court of learned Civil Judge (Senior Division)-IX, Jamshedpur. He further submits that in these background if any case is made out that is civil in nature and the police has rightly submitted final form inspite of that the learned court has been pleased to take cognizance under section 418 of the I.P.C. which is not maintainable. He relied in the case of ***Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1***. He refers to para 42, 45 and 47 of the said judgment which is quoted hereinbelow:-

"42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. 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 a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.

45. Even if all the averments made in the FIR are taken to be correct, the case for prosecution under Sections 420 and 467 IPC is not made out against the appellants. To prevent abuse of the process and to secure the ends of justice, it becomes imperative to quash the FIR and any further proceedings emanating therefrom.

47. Before parting with this appeal, we would like to discuss an issue which is of great public importance i.e. how and when warrants should be issued by the court? It has come to our notice that in many casesailable and non-ailable warrants are issued casually and mechanically. In the instant case, the court without properly comprehending the nature of controversy involved and without exhausting the available remedies issued non-ailable warrants. The trial court disregarded the settled legal position clearly enumerated in the following two cases."

7. Relying on the said judgment he submits that intention of cheating from the very beginning ingredient is lacking in the case in hand however, the learned court has been pleased to take cognizance under section 418 of the I.P.C. which is not in accordance with law. He further relied in the case of ***Murari Lal Gupta v. Gopi Singh, (2005) 13 SCC 699*** . He refers to para 6

of the said judgment which is quoted hereinbelow:-

"6. We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having taken into consideration all the material made available on record by the parties and after hearing the learned counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent."

8. Relying on the above judgement Mr. Singh further submits that merely because the agreement is there that cannot be subject matter of the criminal proceeding. On these grounds, he submits that the entire criminal proceeding may be quashed.

9. On the other hand, Mr. Prabhu Dayal Agrawal, learned senior counsel for the State submits that police submitted final form saying the case civil in nature however the learned court has been pleased to take cognizance on the protest petition.

10. Admittedly, the complaint case has been filed alleging therein that three bank drafts to the tune of Rs. 20 lakh have been issued which was received by the accused no.1. In para 8 of the complaint petition itself it has been stated that accused no.1 is required to refund Rs. 10 crore because of breach of agreement which clearly suggests that if any case is made out that is civil in nature and for that criminal colour has been provided by the O.P. No.2. Further from the document brought on record by way of

supplementary affidavit it is crystal clear that the said bank drafts have not been encashed as yet and if encashment is not there the Court finds force in the argument of learned senior counsel for the petitioners as Section 25 of the Contract is attracted. In the light of Section 25 of the Contract Act in absence of any consideration the contract deemed to be void contract. Section 415 I.P.C. is definition of cheating. In the light of said definition to hold a person guilty of cheating it is necessary to show that he had fraudulent and dishonest intention at the time of making the promise. Consequence of not encashing of drafts in question suggests that intention from the very beginning was not there which is paramount consideration in a case arising out under section 415 I.P.C. and other sections with regard to the cheating.

11. Thus, in view of these facts the judgments relied by the learned counsels for the petitioners in the case of ***Inder Mohan Goswami (supra) and Murari Lal Gupta (supra)*** are in favour of the petitioners.

12. It is well settled that a breach of contract does give rise to criminal prosecution for cheating unless the fraudulent and dishonest intention is there in the beginning of the transaction. Merely on the allegation of failure to keep premises will not be enough to initiate criminal proceeding. Further one fact is on the record which suggests that Title Suit No. 107 of 2009 was instituted by the O.P. No.2 which is still pending. Criminal Courts are not meant to use for settling the scores or pressurize the parties to settle the dispute. Whenever ingredients of criminal offences are made out criminal courts can take cognizance.

13. In the case in hand F.I.R. has already been registered

and pursuant to direction of the learned court police investigated the matter and submitted final form saying the case civil in nature. In this background the Court finds that final form was rightly submitted saying the case civil in nature however, the learned court has taken cognizance on the basis of protest petition. Further the learned court in order taking cognizance has stated that the case is arising out of breach of agreement inspite of that he has taken cognizance.

14. In view of above facts, reasons and analysis the Court comes to the conclusion that if criminal proceeding is allowed to be continue against the petitioners before the learned court will amount the abuse of process of law.

15. Accordingly, the entire criminal proceeding including order taking cognizance dated 10.01.2018 in connection with Complaint Case No. 1499 of 2011, pending in the Court of the learned Chief Judicial Magistrate, Ranchi, is quashed.

16. This petition is allowed and disposed of. Pending I.A, if any, stands, disposed of. Interim order is vacated.

17. The Court has not opined on the merit of pending Title Suit and that will be decided in accordance with law without prejudice to this order.

(Sanjay Kumar Dwivedi, J.)