

HIGH COURT OF ORISSA: CUTTACK

BLAPL No. 1747 OF 2020

(In the matter of an application under Section 439, Criminal Procedure Code, 1973)

S. Ranjan Raju ... **Petitioner**

Versus

State of Odisha ... **Opp. Party**

For petitioner Mr. Bibhu Prasad Das, Subhashis Samal, Abhishek Mohanty, S.K. Firoz, Gaurav Mohanty, Chetna Patnaik, Advocates.

For the Informant: Surendranath Kar, Advocate.

For the Opp. Party: Mr. S.S. Mohapatra, Addl. Standing Counsel

PRESENT

THE HONOURABLE SHRI JUSTICE S.K. PANIGRAHI

Date of Hearing: 03.06.2020 **Date of judgment:13.07.2020**

1.The petitioner is named as accused in the complaint lodged by one Kallakuri Gola Babu under Sections 341/417/420/406/294/506, I.P.C. which was sent for enquiry under Section 156(3), Cr.P.C. by the learned J.M.F.C., Chandikhole in I.C.C. No.39 of 2020 and a case was registered as Badachana P.S. Case No.13 of 2020 corresponding to C.T.

Case No.123 of 2020 in the file of Assistant Sessions Judge, Chandikhole, awaiting submission of final form. The petitioner has also approached before the learned Assistant Sessions Judge, Chandikhole vide Bail Application No.33 of 2020 which was rejected vide order dated 20.02.2020 with a reason that the case diary was not available at the time of hearing.

2.The factual conspectus as set out in the F.I.R. is that the complainant has alleged in his complaint dated 28.01.2020 that the complainant had allegedly owed Rs.64,00,000/- (rupees sixty four lakhs) from the petitioner. Apparently, the petitioner and the complainant are co-villagers and had business relationship for the last 15 years. The petitioner is the proprietor of “M/s. Kallakuri Entrepreneurs” in Bhubaneswar and the complainant is the Managing Director of the “Kallakuri Foods Pvt. Ltd.” The complainant used to supply Ghee (Surya Chandra Brand) and Banaspati (K.G. Brand) to the petitioner for the last one and half decade. The petitioner and the complainant were in good terms in their business relationship over the years. It is alleged that the complainant had made payment to the petitioner for purchasing one flat at Bhubaneswar in “Smruti Residency” with utmost belief and trust that the said flat would be delivered in future towards the settlement of the outstanding

dues pending with the petitioner. It is further alleged that while the complainant requested to the petitioner over telephone to settle his outstanding dues or transfer the flat in his name. Instead, the petitioner is alleged to have abused the complainant and threatened to kill him. The allegation also demonstrates that on 22nd of January, 2020 at about 5.30 P.M, the Petitioner and the Complainant started hotly discussing about the outstanding amount due on the petitioner at a spot near a petrol pump at Chandikhole. As per F.I.R., the petitioner alleged to have scolded the informant with abusive languages and assaulted him by means of iron rod for which he sustained injuries. The petitioner is in custody since 12th of February, 2020 and since then the business transactions between the petitioner and the complainant has also been stopped.

3. Learned counsel for the petitioner, Mr. Bibhu Prasad Das submits that the complainant had intentionally lodged a false case against the petitioner, he had never abused or assaulted the complainant and they had very cordial business relationship for such a long period of time. The petitioner was purchasing Ghee and Banaspati from the complainant thereby effecting crores of rupees as turnover. Learned counsel for the petitioner further submits that the

complainant had never paid anything to the petitioner for the purpose of purchasing of flat but the petitioner had purchased a flat from his hard earned money where he was residing and the complainant was eyeing over the said flat to get it transferred in his name. When the petitioner did not show his inclination for transferring the said flat, the complainant intentionally entangled the petitioner in this false and fabricated case. The allegation of assault to the informant by means of iron rod is totally false and fabricated. It is nothing but a means to foist a criminal case against the petitioner and to intentionally harass him.

4.Per contra, Mr. S.S. Mohapatra, learned Additional Standing Counsel vehemently objected the bail application of the petitioner on the ground that the petitioner's submission of passport and Air ticket cannot be considered to be a valid plea of alibi even if it is assumed that the petitioner was not present at the time of the alleged occurrence at the crime spot. The correctness or otherwise of the said allegations has to be decided only in the Trial.

5. Perused the Case Diary and the relevant documents, while scanning through the materials on record, it was found that

the petitioner and the complainant had a long-standing business relationship.

In the meantime, learned counsel for the complainant handed over some account statements pertaining to “M/s. Kollakuri Entrepreneurs” for perusal of this Court, which reflected some of the financial transactions, E-Waybill and some Tax Invoices which establishes their long-standing business relationship. However, the said documents do not show any evidence regarding payment of money to the petitioner for the purpose of transferring the flat in question. Thus, these documents fail to come to the aid of the complainant, since it does not reflect anything regarding the transfer of money done by the complainant to the petitioner for the purpose of transferring the said flat in question. Even if it is assumed that the complainant had paid the money to the petitioner seeking the transfer of the said flat in his name, he has failed to produce any document or Bank statement or draft or cheque as proof of the alleged transactions.

6. The instant case, prima facie, seems to be born out of a civil dispute between the parties and it was given a colour of criminal case. Of course, a thorough trial may bring different version of the story. Coming to the charges invoked by the

complainant under Sections 420, 417, I.P.C. etc. to set the criminal proceedings in motion, it is, at best, falling under a breach of contract but the element of cheating, *prima facie*, does not come to the fore. The case in hand, *prima facie*, has the ingredients of a civil dispute having several remedies available outside this Court. Nevertheless, the truth or otherwise of the instant case can be unearthed at the stage of trial. One of the major reasons why litigants opt for a criminal prosecution as opposed to civil proceedings because of a perceived notion that criminal proceedings offer quick relief which often drives the litigants to initiate false and vexatious proceedings. The Apex Court in ***Indian Oil Corporation v. NPEC India Ltd. & Ors***¹. took note of this issue stating that people prefer a criminal case over civil proceedings because of the prevailing notion that civil law remedies are notoriously time consuming and do not adequately protect the interests of lenders and creditors. This tendency is also observed in several family disputes leading to irretrievable break down of marriages. A general notion prevalent in the mind of an average litigant is that if a person could somehow be involved in a criminal prosecution, there are high chances of imminent settlement. Any effort to settle a civil dispute which does not

¹AIR 2006 SC 2780

involves any criminal offence, by applying pressure though criminal prosecution should be discouraged. Apart from the precedents, there are in-built mechanisms in statutes conferring on courts the power to prevent the abuse of the process of the court with respect to a matter which should be dealt by a civil court.

7. The Apex Court in *Lalita Kumari vs. Govt. of U.P & Ors*² has also held that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether a cognizable offence is disclosed or not. As per the said decision, an illustrative category of cases in which a preliminary inquiry may be made are: Matrimonial disputes/family disputes, Commercial offences, Medical negligence cases, Corruption cases and Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. Hence, when a criminal case is falsely initiated for disputes that are civil in nature, a remedy is available under Section 211 of the IPC read with Section 182 of the IPC.

²2014 (2) SCC 1

8.The Advisory Council of the National Mission for Justice Delivery and Legal Reforms³ noted that out of over 18.6 million criminal cases pending in the subordinate courts of the country only 2.8 million cases pertain to serious crimes. Needless to state, filing of frivolous cases which seek to wreck vengeance by tweaking civil disputes into criminal cases adds to these petty crimes. Such attempts should be stalled so that the focus of attention in the criminal courts remain on serious crimes, which affect the society at large.

9.There is a growing tendency among litigants to give civil cases the colour and complexion of criminal cases in the likelihood of an imminent settlement. This Court is regularly witnessing a worrisome trend of increasing instances of abuse of the process of law by litigants seeking to settle civil disputes, using the criminal law machinery. It is imperative that in cases of some contractual disputes or other kinds of civil dispute which are sought to be criminalized should follow a procedure of conducting a mandatory preliminary inquiry before resorting to file/registering a FIR. This safeguard of conducting a preliminary enquiry can prevent criminalization of disputes that are civil in nature. The duty to curb such menace, by not forcing a person to go through the rigmarole

³ Tenth Meeting held on 18.10.2016 (as available on www.doj.gov.in)

of criminal prosecution, in purely civil disputes, commences with the police. It is once again reiterated that the case in hand may throw some different perspective after the trial, the entire discussion is based on the prima facie view taken by this court and the general trend prevalent in the criminal litigation.

10.In view of the facts and circumstances of the case as discussed above, it is directed that the petitioner be enlarged on bail on some terms and conditions as deemed just and proper by the learned Assistant Sessions Judge, Chandikhole. It is, however, clarified that the above observations shall not come in the way of a fair trial before the Ld. Trial Court and it will proceed to decide the matter on its own merits, uninfluenced by any of the observation made hereinabove. The bail Application is accordingly disposed of.

[S.K.PANIGRAHI,J.]

Orissa High Court, Cuttack.
The day of 13thJuly, 2020.