
(2023) 10 JH CK 0030

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2098 Of 2022

Dija Pada Roy And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 12-10-2023

Acts Referred:

Indian Penal Code, 1860 — Section 379, 419, 420, 504, 506

Citation : (2023) 10 JH CK 0030

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Mukesh Bihari Lal, Achinto Sen, Shailesh

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard 1. Mr. Mukesh Bihari Lal, learned counsel for the petitioners, Mr. Shailesh, learned counsel for opposite party no.2 and Mr. Achinto Sen, learned counsel for the State.

2. This petition has been filed for quashing of the entire criminal proceeding including the order taking cognizance dated 05.05.2015 arising out of Dhanbad P.S. Case No.670 of 2014, corresponding to G.R. No.3011 of 2014, pending in the court of the learned Judicial Magistrate, 1st Class, Dhanbad.

3. The FIR was registered alleging therein that an agreement was executed between the petitioner no.1 and informant on 09.02.2010 for sale of land. It was further alleged that on 09.02.2010, petitioner no.1 received a sum of Rs.2,50,000/- from the informant and it was agreed that he will register the said land within five months. It was also alleged that petitioner no.1 always denied to register the same. It was further alleged that petitioner no.1 and his both sons, petitioner nos.2 and 3, abused the informant and took a sum of Rs.4,000/- from the pocket of the informant.

4. Mr. Mukesh Bihari Lal, learned counsel for the petitioners submits that an agreement for sale of land was executed on 02.09.2010 between petitioner no.1 and opposite party no.2. He submits that the allegations are there that sum of Rs.2,50,000/- was not returned to opposite party no.2. He also submits that in view of the order passed by the learned Sessions Judge, Dhanbad in A.B.P. No.206 of 2015, the said amount has already been returned to opposite party no.2. He submits that the case is not made out against the petitioners under Section 419/420/504/506/379 of the Indian Penal Code. He submits that maliciously the case has been filed against the petitioners.

5. Mr. Shailesh, learned counsel for opposite party no.2 submits that the case has been rightly filed and the learned Court has taken cognizance and at this stage, this Court may not interfere.

6. Mr. Achinto Sen, learned counsel for the State submits that it appears from Annexure-2 that the amount has been deposited and direction is there to hand it over to opposite party no.2.

7. In view of the above submissions of the learned counsel for the parties, it appears that the dispute is with regard to non-execution of the agreement entered between the petitioner no.1 and opposite party no.2. The agreement was executed on 09.02.2010, whereas, the present FIR has been lodged on 29.06.2014, which clearly suggests that it was an afterthought. Even the money suit limitation is there only for three years. It appears that for recovery of the amount, the present FIR has been lodged. However, it appears from Annexure-2, which is an order passed by the learned Sessions Judge, Dhanbad which speaks that sum of Rs.2,50,000/-has already been received by opposite party no.2.

8. 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. A reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of Uma Shankar Gopalika v. State of Bihar and another, reported in [(2005) 10 SCC 336].

9. In view of the above facts, reasons and analysis, the entire criminal proceeding including the order taking cognizance dated 05.05.2015 arising out of Dhanbad P.S. Case No.670 of 2014, corresponding to G.R. No.3011 of 2014, pending in the Court of the learned Judicial Magistrate, 1st Class, Dhanbad are quashed.

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

11. Pending I.A, if any, is disposed of.