
(2015) 05 RAJ CK 0035

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 2132 of 2012

Gajendra Singh Parihar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2015) 05 RAJ CK 0035

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Paramveer Singh and T.S. Champawat, for the Appellant; O.P. Rathi, Public Prosecutor, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Vijay Bishnoi, J.—The matter comes up on an application (CRLMA No. 433/2015) with a prayer for early listing of the case.

2. With the consent of learned counsel for the parties, the matter is heard finally today. Hence, the application (CRLMA No. 433/2015) for early listing of the case is disposed of.

3. Heard learned counsels for the parties.

4. The impugned FIR has been lodged by the respondent No. 2 while alleging that the petitioners are Directors of a private company viz. M/s. Curious House Private Limited and the petitioner No. 1 has approached the respondent No. 2 and offered to sell 38508 sq. ft. of land belonging to the private company. It is contended in the FIR that the respondent No. 2 has agreed for purchasing the said land and for that purpose he has given Rs. 50,00,000/- in advance through cheque and thereafter time to time has given cash payment to the other petitioners. It is alleged that after some time when the complainant-respondent No. 2 had asked to get the sale-deed executed in his favour, the petitioners had refused to do so and as such the petitioners have committed offences of cheating

and breach of trust. The impugned FIR has been registered by the police for the offences punishable under Section 420 and 406 IPC.

5. Learned counsel for the petitioners has argued that from bare reading of the whole FIR, it is clear that the dispute between the parties is purely of civil nature and, therefore, the impugned FIR is not maintainable. It is contended that even though, if it is admitted that the petitioners have received the amount from the complainant-respondent No. 2 for the purpose of selling the land of the private company and thereafter refused to sell the said land, no offences punishable under Section 420 and 406 IPC is made out against the petitioners.

6. Learned counsel for the petitioners has placed reliance on following decisions of Hon"ble Supreme Court rendered in Joseph Salvaraj A. Vs. State of Gujarat and Others, AIR 2011 SC 2258 : (2011) 7 JT 53 : (2011) 3 RCR(Criminal) 632 : (2011) 6 SCALE 731 : (2011) 7 SCC 59 : (2011) 3 SCC(Cri) 23 : (2011) 8 SCR 815 ; Dalip Kaur and Ors. Vs. Jagnar Singh and Anr., AIR 2006 SC 3191; V.Y. Jose and Another Vs. State of Gujarat and Another, (2008) 16 SCALE 167 : (2009) 3 SCC 78 ; V.P. Shrivastava Vs. Indian Explosives Ltd. and Others, (2010) 4 BC 436 : (2010) 159 CompCas 529 : (2010) 10 JT 479 : (2010) 10 SCALE 177 : (2010) 10 SCC 361 : (2011) 105 SCL 234 ; Ram Biraji Devi and Anr. Vs. Umesh Kumar Singh and Anr., 2006 Cr.L.J. (SC) 482 and Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, AIR 2008 SC 251 : (2007) 5 CTC 614 : (2007) 11 JT 499 : (2007) 12 SCALE 15 : (2007) 10 SCR 847 : (2007) AIRSCW 6659 . Learned counsel for the petitioners has also placed reliance on the decisions of this Court rendered in Pramod Kumar Chhaparwal and Another Vs. State of Rajasthan and Others, (2012) 1 Crimes 474 : (2012) 1 RLW 375 ; Sidharth Vs. State of Rajasthan and Anr., 2013 (2) RLW 1233 (Raj.) and Devendra @ Chhotu Lal Vs. State of Rajasthan and Anr. (SB CRLMP No. 1721/2010) decided on 02.05.2013 and the decision of Uttaranchal High Court rendered in Pradosh Kumar Awasthi Vs. State of Uttaranchal and Anr., 2011 (2) UC 1482.

7. Per contra, learned Public Prosecutor as well as learned counsel for the respondent No. 2 have argued that the petitioners have received the amount of Rs. 3,00,00,000/- from the complainant-respondent No. 2 through cheque and in cash with the promise that they would sell the land of the private company to the respondent No. 2, however, later on, they refused to act upon the said promise and as such committed the offences of cheating and breach of trust. Learned counsel for the respondent No. 2 has submitted that from beginning, the intention of the petitioners was to cheat the respondent No. 2 and this has specifically been mentioned in the FIR too. Therefore, it cannot be said that the dispute between the parties is purely of civil nature. Learned Public Prosecutor has further submitted that the investigation into the matter is complete and during the course of investigation, the petitioners have admitted that they have received some amount from the complainant-respondent No. 2 for the purpose of selling of the land of private company, however, the same has not been sold to

him. As per the factual report, the police has also recovered the receipt written by the petitioner No. 1, wherein he has admitted to receive the amount from the complainant-respondent No. 2 through cheque and in cash. As per the said receipt, the petitioner No. 1 has also promised to repay the said amount but later on, he refused to do so.

8. In the impugned FIR, the complainant-respondent No. 2 has clearly averred that the petitioner No. 1 has lured him to purchase the land of the private company and later on, after receiving the said amount of Rs. 3,00,00,000/- in installment, all the petitioners have refused to sell the land for one or another excuse and as such committed offence of breach of trust.

9. In the aforesaid decisions relied upon by learned counsel for the petitioners it has been held that where a dispute is purely of civil nature, the criminal prosecution cannot be lodged. However, in the present case, as per admitted position taken by the parties during the course of investigation, it cannot be said that the matter is purely of civil nature.

10. Hence, in view of the above discussion, I do not find any merit in this criminal misc. petition and the same is hereby dismissed.

11. Stay petition also stands dismissed.