
(2008) 12 JH CK 0042
In the Jharkhand High Court

Kishore Kumar Gera

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

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

Citation : (2009) 1 JCR 504

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Though today the Interlocutory Application filed on behalf of the petitioner for continuance of the interim order dated 20th November, 2008 has been placed for consideration on the ground that the talk of compromise is going on between the parties but Mr. Shailesh, learned Counsel appearing for the respondent No. 2 controverted the said statement made on behalf of the petitioner and submitted that he has not such information and therefore, objected to the prayer made in the said Interlocutory Application for continuance of the interim order.

2. At this juncture, Mr. Kalyan Roy, learned Counsel appearing for the petitioner as well as Mr. Shailesh learned Counsel appearing for the opposite party No. 2 stated that let the main writ petition be heard and disposed of on its merit.

3. Accordingly, I have heard the learned Counsel for the parties on the merit of the writ petition.

4. The prayer of the petitioner in this writ petition is for quashing the First Information Report of Chutia P.S. Case No. 119/2008 which has been registered under Sections 406 and 420 of the Indian Penal Code against the petitioner at the instance of the respondent No. 2 Vijay Minocha. It has been alleged in the FIR Annexure-1 that the accused named in the FIR namely Kishore Kumar Gera (petitioner) asked the informant for some money for construction of flat on his

land. The informant managed a loan of Rs. 5 lacks from the marked for the accused. It is further alleged that after few days, the accused on the pretext to provide Flat to the informant again demanded money by way of advance which was paid to the accused by the informant on several dates mentioned in the FIR. In this way Rs. 10 lac was paid to the accused by the accused did not construct any flat on the said land rather he constructed a Hotel by name "Sai Heritage" which was being run by him. When the informant asked him to return his money with interest, he was ill treated by the accused and he refused to return the money and thereby, he cheated the informant.

5. Mr. Kalyan Roy, learned Counsel for the petitioner submitted that the allegations made in the FIR are basically of a civil nature and for which no criminal prosecution would lie. As a matter of fact, the informant lodged the FIR only for realisation of money. He further submitted that all the allegations made in the FIR are false and fabricated.

6. On the other hand, Mr. Shailesh learned Counsel appearing for the respondent No. 2 submits that the petitioner in order to cheat the informant, dishonestly procured a handsome amount of money from him on the pretext that he would provide him a flat but in place of constructing flats, he dishonestly utilised the said money of the petitioner in construction of a hotel and thereby committed an offence as alleged in the FIR.

7. The pleas which have been raised by the petitioner for quashing of the FIR such as "whether the amount was actually advanced to the petitioner or not? Whether there was any such promise as alleged was made by the petitioner or not?" are about the facts which may be verified in course of investigation. The falsity or otherwise of the allegations made in the FIR cannot be gone into by this Court at this stage under its writ jurisdiction. This is prerogative of the police to investigate the case and find the truth. Therefore, in my view, no case at all is made out for quashing of the FIR as prayed for by the petitioner.

8. Accordingly, having found no merit, this writ petition is dismissed and the interim order dated 20.9.2008 is hereby vacated.