

(2022) 07 JH CK 0014

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 3227 Of 2017

Mukesh Kumar Sinha

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 11-07-2022

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406, 420
Code Of Criminal Procedure, 1973 — Section 156(3)

Citation : (2022) 07 JH CK 0014

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Navneet Sahay, Rakesh Ranjan, Sanjay Kumar

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Navneet Sahay, learned counsel for the petitioner, Mr. Rakesh Ranjan, learned counsel for the State and Mr. Sanjay Kumar, learned counsel for opposite party no.2.

2. This petition has been filed for quashing the order dated 08.04.2016 whereby cognizance under Section 406 and 420 of the Indian Penal Code has been taken against the petitioner in connection with Ormanjhi P.S. Case No. 104/2015 corresponding to G.R. No.3431/2015, pending in the court of the learned Judicial Magistrate, 1st Class at Ranchi.

3. The informant lodged the FIR alleging therein that the informant in the year 2009 entered into an agreement with one Samridhi Creative Pvt. Ltd. for the purpose of having purchase of a Duplex in the project 'Rainbow 7' which was under construction. The informant gave Rs.18,90,000/- to one Mr. Rohan Kumar. Subsequently, the informant learnt that the entire work and responsibility of construction and bonafide ownership has been shifted on the shoulders of one Mr. Mukesh Kumar Sinha. It was further alleged that the informant has been

asking for the possessions of that flat since long and the accused person is not giving the possession of the Duplex.

4. Learned counsel for the petitioner submits that opposite party no.2 entered into an agreement with Samridhi Creative Pvt. Ltd. for purchase of Duplex and subsequently that firm was taken over by this petitioner. He further submits that out of Rs.21,90,000/-, the amount of Rs.18,90,000/- was paid to earlier owner of the company and subsequently only Rs.3 Lakhs has been paid to this petitioner, who was handed over the work and responsibility of the firm in question, later on. He also submits that the complex has already been completed and for certain remaining work, this case has been filed. He further submits that the case is arising out of an agreement and if there is breach of an agreement, opposite party no.2 was required to file specific performance suit before the competent court, however criminal case has been filed. He also submits that the petitioner has already filed Consumer Complaint Case No.51/2015 before the Consumer Forum, Ranchi. On this background, he submits that entire criminal proceeding may be quashed by this Court.

5. Mr. Sanjay Kumar, learned counsel for opposite party no.2 submits that the petitioner has already taken the liability of the said firm and that is why the petitioner is liable to complete the entire work.

6. The Court has gone through the materials on the record and finds that the case is arising out of an agreement for purchase of Duplex/flat and for non-completion of certain work, this case has been filed. Opposite party no.2 has already filed a consumer case under the Consumer Protection Act. It is well settled that once forum is instituted, the parties are required to follow the statute of that forum and the forum cannot be practiced as shopping centre. A classic example of forum shopping is when litigant approached one Court for relief but does not get the desired relief and then approached another Court for the same relief. A reference may be made to the judgment rendered by the Hon'ble Supreme Court in the case of Vijay Kumar Ghai & others v. State of West Bengal & others, reported in 2022 SCC OnLine SC 344. Paragraphs 33 and 36 of the said judgment are quoted herein below:

"33. Predominantly, the Indian Judiciary has time and again reiterated that forum shopping take several hues and shades but the concept of 'forum shopping' has not been rendered an exclusive definition in any Indian statute. Forum shopping as per Merriam Webster dictionary is:—

"The practice of choosing the court in which to bring an action from among those courts that could properly exercise jurisdiction based on determination of which court is likely to provide the most favourable outcome"

36. Forum shopping has been termed as disreputable practice by the courts and has no sanction and paramountcy in law. In spite of this Court condemning the practice of forum shopping, Respondent No. 2 filed two complaints i.e., a complaint u/s 156(3) Cr.P.C before the Tis Hazari Court, New Delhi on

06.06.2012 and a complaint which was eventually registered as FIR No. 168 u/s 406, 420, 120B IPC before PS Bowbazar, Calcutta on 28.03.2013. ie., one in Delhi and one complaint in Kolkata. The Complaint filed in Kolkata was a reproduction of the complaint filed in Delhi except with the change of place occurrence in order to create a jurisdiction."

7. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In this regard, reference may be made to the judgment rendered in the case of Vijay Kumar Ghai (supra). Paragraphs

47 and 62 of the said judgment are quoted herein below:

"47. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corporation (Supra) noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that:—

"13. ...any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

62. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this court in Hridaya Ranjan Prasad Verma v. State of Bihar²⁶, the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by the Respondent No. 2 does not disclose dishonest or fraudulent intention of the appellants."

8. Admittedly, the case is arising out of an agreement. The opposite party no.2 has already approached the Consumer Forum, Ranchi under Consumer Protection Act. To allow this proceeding to continue, will amount to abuse of process of law.

9. In view of the above facts, the entire criminal proceedings including the order dated 08.04.2016 passed in connection with Ormanjhi P.S. Case No. 104/2015 corresponding to G.R. No.3431/2015, pending in the court of the learned Judicial Magistrate, 1st Class at Ranchi is, hereby, quashed.

10. It is made clear that this Court has not opined on the merit of the civil proceeding and that will be decided, in accordance with law.

11. Accordingly, this petition stands allowed and disposed of.

12. Interim order dated 14.02.2018 stands vacated.