

(2015) 09 JH CK 0095
In the Jharkhand High Court
Case No : Criminal M.P. No. 1118 of 2015

Narayan Chakraborty

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 34, 406, 420

Citation : (2015) 4 JLJR 248

Hon'ble Judges : Harish Chandra Mishra, J.

Bench : Single Bench

Advocate : Mrinal Kanti Roy, for the Appellant; Ashok Kumar No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioner and learned counsel for the State. The petitioner has filed this application for quashing the entire criminal proceeding against him in C.P. Case No. 12154 of 2014, including the order dated 25.2.2015 passed therein, by learned Sub-Divisional Judicial Magistrate, Dhanbad, whereby prima facie offence under Sections 406 , 420 /34 of the Indian Penal Code has been found against the petitioner.

2. The complaint petition has been brought on record, which shows that in the complaint petition, there is direct allegation against the petitioner to have received Rs. 8,00,000/- from the complainant and to have executed an agreement for sale of land. The land was not sold to the complainant and thereafter the petitioner gave a cheque of Rs. 10,00,000/- to the complainant, which subsequently bounced. The complainant had also separately filed a complaint case being C.P. Case No. 11998 of 2014 for the offence under Section 138 of the N.I. Act against the petitioner. Alleging that the accused persons, including the petitioner, in convenience (sic--connivance?) with each other, had with fraudulent intention cheated and misappropriated the money of the

complainant, the present complaint case has been filed.

3. Learned counsel for the petitioner has submitted that the dispute between the parties, of executing an agreement for sale of land, is absolutely of civil of nature and for bouncing of the cheque, a separate complaint case has been filed against the petitioner. It is also submitted that the present case has been maliciously filed against the petitioner giving a colour of criminal offence to the dispute between the parties, which is actually of civil nature, and accordingly, the criminal proceeding against the petitioner is fit to be quashed. In this connection, learned counsel has placed reliance upon a decision of the Supreme Court in *G. Sagar Suri and Another Vs. State of U.P. and Others*, . Learned counsel has accordingly, prayed for quashing the entire criminal proceeding against the petitioner.

4. Learned counsel for the State has opposed the prayer.

5. In the complaint petition, it is directly alleged that the petitioner had received Rs. 8,00,000/- from the complainant and had not executed sale deed in favour of the complainant and the said money was misappropriated. There is allegation that the accused persons, including the petitioner, in convenience (sic--connivance?) with each other, had with fraudulent intention cheated and misappropriated the money of the complainant. This clearly makes out a criminal offence against the petitioner. In *G. Sagar Suri's* case (supra), the appellant had taken loan from the Finance Company and for payment of loan, the cheque was given, which was dishonored and in that background, the Apex Court had held that a criminal complaint under Section 138 of the Negotiable Instruments Act was already pending against the appellants and other accused, and they would suffer the consequences if offence under Section 138 is proved against them.

6. The facts of this case is quite different, inasmuch as, there is specific allegation against the petitioner to have taken Rs. 8,00,000/- for execution of the sale deed and the sale deed was not executed and money was misappropriated. There is allegation that the accused persons, including the petitioner, in convenience (sic--connivance?) with each other, had with fraudulent intention cheated and misappropriated the money of the complainant. I am of the considered view that the facts of this case is quite different from the facts in *G. Sagar Suri's* case (supra), relied upon by learned counsel for the petitioner and the said decision is not applicable to the facts of this case. In the facts of this case, I do not see any reason for interfering in the criminal proceeding against the petitioner. There is no merit in this application and the same is accordingly, dismissed.