

(2023) 02 JH CK 0024

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2939 Of 2022

Sachidanand Singh @ Sachit Singh

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 15-02-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 406, 420, 467, 468

Citation : (2023) 02 JH CK 0024

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : B.K. Dubey, Amrita Kumari, A.S. Dayal

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

1. Instant petition has been filed for quashing the summoning order dated 14.06.2022 passed in Complaint Case No.972 of 2021 whereby prima facie case has been found to be made out under Sections 406, 420, 467, 468, 34 of the I.P.C.

2. As per the case of the complaint, Rs.32,20,000/- was taken in pursuance of an agreement of sale out by the accused persons. Out of this, Rs.16,10,000/- was taken by Subodh Singh and Rs.16,10,000/- was taken by this petitioner who were attorney holder of the said land of Shambhu Nath Sahay. It is alleged that neither the sale deed was executed nor the amount was returned by this petitioner. Subodh Singh, however returned the amount of Rs.16,10,000. On the basis of the statement of the complainant and three witnesses, who were examined during enquiry, prima facie case was found to be made out and impugned order has been passed.

3. It is submitted by the learned counsel on behalf of petitioner that not a chit of paper has been filed on behalf of complainant. Neither the agreement of sale nor the power of attorney on the basis of which the agreement of sale was entered

nor any money receipt was filed along with the complaint petition before the Court below. Only on the basis of the oral witnesses, the summoning order has been issued, which is not sustainable in view of ratio decided in 2022 (3) JLJR 564, (2013) 6 SCC 740, (2015) 8 SCC 293, 2009 (2) JLJR 1, 2019 (2) JLJR 7.

4. It is submitted by learned counsel on behalf of opposite party No.2 that the details of land in question has been furnished in para 2 of the complaint petition as well as in the agreement of sale which is annexed with the counter affidavit. It is submitted that during enquiry none other than the partner of this petitioner who had jointly entered into agreement of sale, Subodh Kumar Singh has been examined in the enquiry as enquiry witness No.1 and he has stated that amount had been taken which has not been returned by this petitioner.

5. Mere existence of civil remedy cannot be a ground to deny a party criminal remedy if the offence is made out on the basis of averments made and there is ground for proceeding. It has been held in *Kamal Shivaji Pokarnekar v. State of Maharashtra*, (2019) 14 SCC 350 that the correctness or otherwise of the said allegations has to be decided only in the trial. At the initial stage of issuance of process, it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted.

6. The short question that falls for consideration is whether the impugned order is liable to be quashed simply for the reason that impugned order is to be set aside only for the reason that the copy of agreement of sale and the power-of-attorney has not been with the complaint petition?

7. This Court is of the view that the impugned order cannot be set aside on the above stated ground. There is direct allegation against the petitioner that he had received the amount from the complainant on a promise of execution of sale deed. The petitioner has failed to perform the promise and has failed to return the amount. Had he perform the part of the promise and it would have been said that there was no intention of deception from inception, but it was a case of breach of contract. Here in the present case, no part of the promise was performed as has come in the statement of witnesses during enquiry. One of the witness is none other than the person with whom he had jointly entered into the agreement of sale. The plea that he was on inimical term with him is part of the defence which cannot be considered at the stage.

The ratio relied upon on behalf of the petitioner, is very different, and will not apply to the facts and circumstance of the case.

I do not find any infirmity in the impugned order. Criminal miscellaneous petition is dismissed.