

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 3969 of 2018

Satyendra Kumar Sinha, son of late Lakshman Prasad, aged about 56 years, r/o Quarter No. -7163, Sector IV-F, P.S.-Sector IV, P.O.-IV, Dist.-Bokaro

.... Petitioner

Versus

1. The State of Jharkhand
2. Bhupjeet Kumar Rawani, son of Sri Mohan Singh, aged about 40 years, resident of Village-Romi, P.S.-Padma, P.O.-Barhi, Dist.-Hazaribagh

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner	 : Mr. Samavesh Bhanj Deo, Advocate : Mr. Raj, Advocate
For the State	: Mrs. Shweta Singh, Addl. P.P.
For O.P. No.2	: Mr. Randhir Kumar, Advocate

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By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 of Cr.P.C. with the prayer to quash the entire criminal proceeding including the order dated 30.05.2018 passed by the learned Chief Judicial Magistrate, Hazaribagh in connection with Protest-cum-Complaint Case No. 727 of 2017 arising out of Sadar P.S. Case No. 432 of 2016 whereby and where under, the learned Chief Judicial Magistrate, Hazaribagh has found *prima facie* case for the offence punishable under Section 418/34 of the Indian Penal Code *inter alia* against the petitioner.

3. The allegation against the petitioner is that the wife of the petitioner sold 8 decimals of land to the complainant but upon measurement it was found that only 7.52 decimals of land was existing and rest of the land is part of an adjacent road.
4. It is submitted by the learned counsel for the petitioner that the allegations against the petitioner are all false and the petitioner is only a witness to the sale deed executed by the co-accused – Sushma Sahay who has since been deceased. It is next submitted by the learned counsel for the petitioner that there is no allegation of the petitioner cheating anybody or causing any wrongful loss to anyone and the main allegation is against the wife of the petitioner hence, even if the entire allegations made against the petitioner are considered to be true in its entirety, still the offence punishable under Section 418 of the Indian Penal Code is not made out.
5. Relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Medchl Chemicals & Pharma (P) Ltd. vs. Biological E. Ltd. & Ors.** reported in (2000) 3 SCC 269, paragraph no. 11 of which reads as under :-

“11. While Section 415 is an offence of cheating, Section 418 deals with cheating with knowledge that wrongful loss may ensue to a person whose interest the offender is bound to protect and Section 420 is cheating and dishonestly inducing delivery of property. In order to attract the provisions of Sections 418 and 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of Section 418 or Section 420. Mens rea is one of the essential ingredients of the offence of cheating under Section 420. As a matter of fact Illustration (g) to Section 415 makes the position clear enough to indicate

that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract and it is this concept which obviously has weighed with the learned Single Judge. But can the factual situation as narrated above in the longish reproduction of the complaint lend support to the observations of the learned Judge, the answer is a pivotal one but before so doing one other aspect as regards the powers under Section 482 CrPC ought to be noticed. As noted hereinbefore this power is to be exercised with due care and caution and rather sparingly and has been so held on more occasions than one." (Emphasis supplied)

it is submitted by the learned counsel for the petitioner that therein, it has categorically been held by the Hon'ble Supreme Court of India that in order to attract the provision inter alia of Section 418 of the Indian Penal Code, the guilty intent at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provision of Section 418 of the Indian Penal Code.

6. It is then submitted by the learned counsel for the petitioner that there is no allegation of guilty intent of the petitioner at the time of making any promise. Hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.
7. The learned Addl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently opposes the prayer and submits that the allegation made in the complaint, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses goes to show that there is sufficient material in the record to constitute the offence punishable under Section 418

of the Indian Penal Code. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

8. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that the complainant first filed Complaint Case No. 276 of 2016 before the court of Chief Judicial Magistrate, Hazaribagh. The same being referred to police under Section 156(3) Cr.P.C., Hazaribagh Sadar P.S. Case No.432 of 2016 has been registered. After investigation of the case police submitted Final Form and did not send up the petitioner for trial as the allegation against the petitioner was found to be not true and thereafter, the complainant filed Protest-cum-Complaint Case No. 727 of 2017 and basing upon the same as well as the statement of the complainant on solemn affirmation and the statement of the inquiry witnesses, the learned Chief Judicial Magistrate, Hazaribagh found *prima facie* case for the offence punishable under Section 418/34 against the wife of the petitioner who has since been deceased and the petitioner.
9. Now coming to the facts of the case, there is absolutely no allegation against the petitioner of cheating or deceiving anybody to part with any property. The sale deed was executed by the wife of the petitioner. The petitioner was only the witness to the sale deed executed by his wife. There is no allegation that there is any impersonation of the executant of the sale deed. The only allegation is that the wife of the petitioner though sold 8 decimals

of the land but in fact, on actual spot verification, it was found that 7.52 decimals was existing while rest of the land has been used as an adjacent road.

10. Under such circumstances, as there is no allegation against the petitioner of committing any cheating, this Court is of the considered view that even if the entire allegations made against the petitioner are considered to be true in its entirety, still the offence punishable under Section 418 of the Indian Penal Code is not made out against the petitioner even with the aid of Section 34 of the Indian Penal Code, therefore, continuation of the criminal proceeding against the petitioner will amount to abuse of process of law and this is a fit case where the entire criminal proceeding including the order dated 30.05.2018 passed by the learned Chief Judicial Magistrate, Hazaribagh in connection with Protest-cum-Complaint Case No. 727 of 2017 arising out of Sadar P.S. Case No. 432 of 2016 be quashed and set aside *qua* the petitioner.
11. Accordingly, the entire criminal proceeding including the order dated 30.05.2018 passed by the learned Chief Judicial Magistrate, Hazaribagh in connection with Protest-cum-Complaint Case No. 727 of 2017 arising out of Sadar P.S. Case No. 432 of 2016 is quashed and set aside *qua* the petitioner.
12. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)