

RAM BIRAJI DEVI AND ANR.
v.
UMESH KUMAR SINGH AND ANR.

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MAY 11, 2006

[ASHOK BHAN AND LOKESHWAR SINGH PANTA, JJ.]

B

Code of Criminal Procedure, 1973—Section 482—Quashing of Complaint/FIR—Dispute in respect of sale and purchase of land—Complaint under sections 406, 419, 420 and 120-B IPC alleging that the seller after accepting the consideration amount refused to transfer the plot to the complainant-purchaser—Cognizance taken by the Magistrate—Petition under section 482 Cr.P.C seeking quashing of cognizance—Dismissal by High Court—On appeal held: Dispute amounts to civil liability inter se the parties—No prima facie case was made out by complainant-purchaser against the seller involving them in the commission of the alleged offence—Cognizance taken by the Magistrate was an abuse of process of Court—This is a case of extreme exception where High Court should have exercised its inherent jurisdiction and power to quash FIR—Thus, the complaint and the cognizance of offence taken liable to be quashed—Penal Code, 1860—Sections 406, 419, 420 and 120 B.

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Trisuns Chemical Industry v. Rajesh Agarwal & Ors., [1999] 8 SCC 686, distinguished.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 632 of 2006.

From the Judgment and Order dated 13.1.2005 of the High Court of Judicature at Patna in Crl. Misc. No. 11930 of 2004.

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Braj Kishore Mishra for Ms. Aparna Jha for the Appellants.

Tarkeshwar Nath, P.K.Mishra, K.K. Rai, Ranjan, K. Pandey and Gopal Singh for the Respondents.

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The Order of the Court was delivered by

LOKESHWAR SINGH PANTA, J. : Special leave granted.

This appeal arises out of the judgment dated 13.1.2005 passed by the High Court of Judicature at Patna in Criminal Misc. No. 11930 of 2004

H

A dismissing the petition filed by the appellants under Section 482 of the Cr. P.C. seeking quashing of the order dated 8.8.2003 of the Judicial Magistrate, Gaya, in Complaint Case No.298/2003 - T.R. No.808/2003.

B Briefly stated the facts of the case are that the Complainant Umesh Kumar Singh - respondent No.1 herein, filed a complaint against the appellants before the Chief Judicial Magistrate, Gaya, *inter alia* alleging that Smt. Ram Biraji Devi appellant No.1 herein, was allotted MIG Plot No. M-27 situated in Housing Board Colony, Gaya. In July 2002, both the appellants represented to the complainant that they were badly in need of money and wanted to transfer the allotted plot to some person interested to purchase the said plot. The complainant expressed his willingness to purchase the plot. C It was alleged that the parties orally agreed that the complainant would pay to the appellants a sum of Rs. 4 lakhs as price of the plot and on payment of the said amount, the appellants would transfer the plot in favour of the complainant.

D It was also alleged that the complainant paid a sum of Rs.80,000/- to the appellants as consideration amount of the sale price of the plot on different dates between 15.7.2000 and 15.12.2002. The appellants alleged to have made promises to the complainant that they would execute a written agreement in favour of the complainant on 15.1.2003, but since they failed to execute the agreement on 20.1.2003, the complainant along with three other persons went to the house of the appellants and enquired about the reason for delay in execution of the agreement. The appellants flatly denied acceptance of Rs.80,000/- and refused to transfer the plot in favour of the complainant. On the basis of the above premise, a criminal complaint dated nil came to be filed in the Court of Chief Judicial Magistrate, Gaya, against the appellants. E F

It appears from the record that Judicial Magistrate, First Class, Gaya, recorded the statements of the complainant and his witnesses on 19.4.2003 and thereupon took cognizance of the offences under Sections 406, 419, 420 and 120-B of Indian Penal Code vide order dated 8.8.2003. G

Being aggrieved against the order of taking of the cognizance by the Judicial Magistrate the appellants approached the High Court of Patna under Section 482 of the Cr. P.C. praying for quashing of the cognizance taken by the Magistrate. The High Court by the impugned order dated 13.1.2005 dismissed the said petition. Hence, this appeal by way of special leave. H

We have heard learned counsel for the parties and perused the material on record. The learned counsel for the appellants contended that the Hon'ble High Court has failed to appreciate that on bare perusal of the contents of the complaint, no offence is made out against the appellants and the complaint filed by the complainant is *mala fide*, false and frivolous against appellant No.1, who is stated to be about 70 years old lady and is suffering from heart disease, whereas the appellant No.2 was working in New Delhi at the relevant time and had gone to Bombay to look after his ailing sister, Manju Tripathi, who was suffering from cancer, on the date of occurrence as alleged in the complaint. According to the learned counsel, the dispute involved in the alleged complaint is of civil nature and none of the acts allegedly committed by the appellants gave rise to any criminal liability.

Per contra, learned counsel for the respondent-complainant contended that the contents of the complaint would disclose the commission of the cognizable offence and this Court at the preliminary stage would not be justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the complaint. He also contended that mere fact that a dispute is of civil nature could not be made a ground for quashing the complaint or FIR. In support of this submission, reliance is placed upon a decision of this Court in *Trisuns Chemical Industry v. Rajesh Agarwal & Ors.*, [1999] 8 SCC 686.

We have given our anxious and thoughtful consideration to the respective contentions of the learned counsel for the parties. On examination of the contents of the complaint, we find that there is not even a whisper of allegation or averment made therein constituting an offence for which cognizance has been taken by the learned Magistrate against the appellants. On the one hand, the complainant himself has stated in the complaint that oral agreement to sell the plot took place in July 2002 and on the other hand, he has alleged that he started paying the consideration amount for the purchase of the plot between 15.7.2000 and 15.12.2002. The version of the complainant is self-contradictory and, therefore, no *prima facie* case is made out against the appellant involving them in the commission of the alleged offences.

The learned Magistrate in his order has categorically stated that the perusal of the complaint would make it clear that there was a dispute in respect of sale and purchase of land between the parties. In our view even if the allegations made in the complaint are accepted to be true and correct,

A the appellants cannot be said to have committed any offence of cheating or criminal breach of trust. Neither any guilty intention can be attributed to them nor there can possibly be any intention on their part to deceive the complainant. No criminal case is made out by the complainant against the appellants in his complaint and in the statements of the complainant and his witnesses recorded by the Magistrate before taking of the cognizance of the alleged offences. The averments of the complaint and the statements of the complainant and his witnesses recorded by the Magistrate would amount to civil liability *inter se* the parties and no criminal liability can be attributed to the appellants on the basis of the material on record. In *Trisuns Chemical Industry's* case (supra), relied upon by the complainant, this Court held as under:

“Quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions. Merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. The provision incorporated in the agreement for referring the disputes to arbitration is not an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases.”

There cannot be any disagreement to the well-settled proposition of law that the High Court should exercise its inherent powers in extreme exceptions to quash an FIR or a complaint. The ratio as laid down in *Trisuns Chemical Industry's* case (supra) is of no help and assistance to the complainant in the facts and circumstances of the present case. The complaint instituted does not disclose that an offence under Section 420 is made out. Cognizance taken by the Magistrate thereon against the appellants for offences u/Ss. 406/419/420 and 120-B IPC are clearly an abuse of the process of court and interference by this Court is expedient in the interest of justice. This is a case of extreme exception where the High Court ought to have exercised its inherent jurisdiction and power to set aside the

unwarranted and unjustified order of the Magistrate impugned before it by the appellants.

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For the aforementioned reasons, we quash the impugned order of the High Court of Judicature at Patna dated 13.01.2005 passed in Criminal Misc. No.11930 of 2004. Consequently, the complaint filed by the Complainant and subsequent order dated 8.8.2003 of the Judicial Magistrate, Gaya, in Complaint Case No.298 of 2003 T.R. 808/03 whereby and whereunder cognizance of offence under Sections 406, 419, 420, 120-B, IPC, has been taken against the appellants and summons have been ordered to be issued against them for facing trial for the above-said offences shall also stand quashed.

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The appeal stands allowed accordingly.

N.J.

Appeal allowed.

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