

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 395 of 2019

Sanjay Kumar Sharda

... Petitioner(s).

Versus

1. The State of Jharkhand through the Director General of Police, Govt. of Jharkhand.
2. The Superintendent of Police, Ramgarh
3. The Officer-In-Charge, Ramgarh Police Station, Ramgarh.
4. The Investigating Officer cum-ASI, Ramgarh Police Station, Ramgarh.
5. Ajay Kumar Singh. ... Respondent(s).

CORAM : HON'BLE MR. JUSTICE ANANDA SEN.
Through: Video Conferencing

For the Petitioner(s) : Mr. Rahul Kumar, Advocate.
For the Respt.-State : Mr. Navin Kr. Singh, S.C.-VII.
For Respondent No. 5 : Mr. Anil Kumar, Sr. Advocate.
Ms. Chandana Kumari, Advocate.

02/18.06.2020: The lawyers have no objection with regard to the proceeding, which has been held through video conferencing today at 10:30 A.M. They have no complaint in respect of the audio and video clarity and quality.

2. By way of filing this petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing of the entire criminal proceeding including the First Information Report in connection with Ramgarh P.S. Case No. 300 of 2018, registered for the offence under Section 406, 420 and 34 IPC, pending before the court of learned Chief Judicial Magistrate, Ramgarh.

3. Heard the counsel for the parties.

4. Counsel for the petitioner submits that from perusal of the FIR, it will be clear that no criminal offence is made out. He further submit that there was on going business transaction between the parties and if for some breach of contract or because of some misunderstanding between the parties, the business transaction fails, it cannot be said that criminal cause of action arises for initiating a criminal proceeding. He submits that FIR was registered at the pressure of "*Mukhya Mantri Jansanbad Kendra*" (the Chief Minister Public Hearing Cell), which is a non-statutory authority and no direction can be given by such authority to register the FIR. He also submits that the action of the said Cell is absolutely bad, when there is procedure laid down in the Code of Criminal Procedure as to what steps are to be taken, and in what manner, if an FIR is refused registration by police.

5. Mr. Anil Kumar, learned senior counsel for respondent No. 5 submits that the petitioner has cheated the respondent No. 5, as some of the materials have been kept/withhold by the petitioner and thus, offence under Section 406 IPC is made out. He further submits that when an offence is made out, FIR cannot be quashed.

6. This is a petition in which, an FIR is sought to be quashed. The law is

well settled on this issue. The Hon'ble Supreme Court in the case of **State of Haryana and Ors. Vs. Bhagan Lal and Ors.** reported in **(1992) Suppl. 1 SCC 335 (2014) 3 SCC 151** has held that when an offence is made out, the FIR cannot be quashed. The Court has to see as to whether from perusal of the FIR, any offence is made out or not.

7. I have gone through the FIR. The informant has stated in the FIR that he had a business relationship with M/s Kameshwar Alloys & Steel Pvt. Ltd., Gola. He submits that the petitioner is the director of M/s Kameshwar Alloys. It is further stated that he was having business transaction with the accused persons since the year 2010 till January-2015. He stated that 40 pieces of Oxygen Cylinder and 26 pieces of commercial Gas Cylinder have been kept by the petitioner, which have not been returned. The value of the materials would be Rs.6,60,000/-. He also submits that neither the amount has been paid nor the cylinders have been returned. This is the sum and substance of the written report, on whose basis, FIR has been registered.

8. From perusal of the aforesaid written report, it is clear that there was business relationship between the parties. This business relationship continued from the year 2010. The materials were kept by the petitioner, valued at Rs.06,60,000/-. It is the case of the informant that the said amount has not been paid to him by the petitioner. FIR has been registered under section 406, 420 and 34 IPC.

9. Section 406 IPC prescribes punishment for criminal breach of trust. Criminal breach of trust is defined under Section 405 IPC, which reads as under.

“405. Criminal Breach of Trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits 'criminal breach of trust'”

In this case, even if there is allegation that the materials were entrusted to the petitioner, but there is no allegation that the materials were dishonestly misappropriated or has been converted to the use of the petitioner. The ingredient of Section 405 IPC is missing in the instant case.

10. Section 420 IPC is punishment for cheating and dishonestly inducing to deliver the property. The word “Cheating” defined under Section 415 IPC, reads as under;

“415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm

to that person in body, mind, reputation or property, is said to 'cheat'".

11. From the facts, narrated in the FIR, I find that there is no element which attracts Section 415 IPC. Admittedly there was business transaction between the parties since the year 2010 to 2015. The intention to cheat by the petitioner cannot be derived from perusal of the instant FIR. The Hon'ble Supreme Court in the case of **Dalip Kaur Vs. Jagnar Singh**, reported in (2009) 14 SCC 696 has held that there has to be an intention to cheat from very beginning of the transaction. While I go through the written report, I find that there is no such pleading to that effect. In absence of this pleading, it can safely be held that there is no application of Section 415 IPC in the instant case.

12. The Hon'ble Supreme Court in the case of **Binod Kumar and Others Vs. State of Bihar and Another** reported in (2014) 10 SCC 663 has held that civil liability cannot be converted into criminal liability. The Hon'ble Supreme Court has also held that by doing so, the power as well as process of the court is abused. The Hon'ble Supreme Court has also held that the criminal proceeding are not the shortcut for other remedies. In the aforesaid judgment, the Hon'ble Supreme Court has taken into consideration several judgments on the same line, which has been delivered by the Hon'ble Supreme Court.

13. Considering the principles laid down by the Hon'ble Supreme Court, I find in the facts and circumstances that even if the FIR is taken on the face value, no offence punishable under Sections 420 and 406 IPC is made out. A simple money claim, arising out of a continuing business transaction, has been given the colour of criminal case, which is nothing but an abuse of the process of law.

14. In view of the aforesaid facts and the principle, which has been laid down by the Hon'ble Supreme Court, I find that continuation of criminal proceeding against the petitioner will be an abuse of the process of the Court. I, therefore, exercising the jurisdiction under Article 226 of the Constitution of India, **quash** the FIR in connection with Ramgarh P.S. Case No. 300 of 2018, registered for the offence under Section 406, 420 and 34 IPC, pending before the court of learned Chief Judicial Magistrate, Ramgarh.

15. Before parting, I find that the FIR was registered at the direction of the "*Mukhya Mantri Jansanbad Kendra*" (the Chief Minister Public Hearing Cell) as the informant made a complaint to that Cell, when the FIR was not being registered. This document is the part of the FIR and from perusal of the same, I find that there was a direction by that Cell on 25.12.2017 to register the FIR. Further several directions were given by the said Cell, which would be apparent from pages 26, 27 and 28 of the FIR. Not only direction but the matter was supervised by the said Cell. If a written complaint is placed before a police officer wherein cognizable offence is alleged, the Officer cannot refuse to register the same as FIR. If there is refusal or negligence on the part of the police in registering the same, the remedy lies in Code

of Criminal Procedure. The complainant/informant can send the complaint to the Superintendent of Police or to the Higher Authority praying therein to register the same. He even has the option to file a complaint before the court of competent jurisdiction. There is no provision in law to approach "*Mukhya Mantri Jansanbad Kendra*", which is absolutely a non-statutory body nor having being vested with any power under Cr.P.C. Further the said "*Mukhya Mantri Jansanbad Kendra*" has got no jurisdiction to direct the police official to register an FIR and have no power to monitor the same. Thus, the "*Mukhya Mantri Jansanbad Kendra*" has absolutely acted beyond jurisdiction and usurped the power, which was not vested in it by the Cr.P.C. This type of usurping of power by the said Cell is deprecated.

16. Let a copy of this order be forwarded to the Chief Secretary of the State and the Advocate General, Jharkhand High Court, Ranchi, for looking into the matter and taking proper action in this matter.

17. With the aforesaid observation and direction, this criminal writ petition stands **allowed**.