

IN THE COURT OF Ms. SHALINI KIRAN
JUDICIAL MAGISTRATE SECOND CLASS, BEGUSARAI
Complaint Case No. 2201 [C-1] of 2022
T.R No. 201 / 2024
Chandan Kumar vs Rekha Devi & Others.

Date of order	Orders with initials of the Magistrate.	Remarks
11/07/2024	Today file is put up before the Court for order. Complainant is absent. Chandan Kumar has lodged this complaint against Rekha Devi, Hemant Kumar, Pankaj Kumar Singh and Rajiv Kumar. The Ld. CJM took cognizance of the offence punishable under section 406, 420, 327, 120b/34 of I.P.C, 1860 and transferred it to this court for inquiry and further proceedings in accordance with Law. <u>Case of the complainant.</u> The story of the complainant, in a nutshell, is that the complainant and witness no. 1, Rakesh Kumar, entered into an agreement (mahdanama) with the accused persons, whereby the complainant and witness no. 1 paid Rs. 10,00,000 through a cheque in the name of accused no. 1, Rekha Devi. The accused promised to register the land immediately after the treatment of accused Rekha Devi. However, they refused to register the land in the name of the complainant and Rakesh Kumar. On the contrary, when the complainant demanded to the return of the money, the accused threatened to extort money. Until now, the accused has neither returned the money nor provided the original document of the land. The complainant then sent a legal notice through his advocate, but did not receive any reply. On 22/10/22 accused visited to the clinic of complainant and said that neither I have land document nor the money. During inquiry, the court examined the complainant on oath under section 200 Cr.P.C, 1973 and also three Inquiry witnesses produced by the complainant namely, IW-1 Rajesh Kumar Singh, IW-2 Neelesh Kumar and IW-3 Manohar Kumar were examined under section 202 Cr.P.C, 1973. <u>Discussion on the Evidences adduced during inquiry:</u>	

NAME OF PRESIDING OFFICER- Ms. SHALINI KIRAN
NAME OF COURT- JM II CLASS
PLACE- BEGUSARAI
PARTY DETAILS- CHANDAN KUMAR VS REKHA DEVI & ORS.
CASE NO. - 2201 of 22
DATE OF ORDER- 11/07/2024

Perused the complaint petition, S/A of the complainant, statement of the inquiry witnesses. Upon perusal the following facts appear:

- The complainant in his S.A. supported the allegation made in the complaint petition. But there is lot of confusion regarding accused number mentioned in complainant petition and his solemn affirmation. In para 3 complainant has admitted that he was entered into an agreement with accused which was not honored by the accused. It is not the case of the complainant that accused acted dishonestly or practiced any kind of deception upon him at the time of entering into agreement. As the accused has shown the document of land to the complainant and upon being satisfied, they entered into an agreement.
- All three enquiry witnesses have supported the case of complainant.
- Copy of agreement, legal notice to the accused, proof of payment done by the complainant enclosed with the complaint petition.

Before proceeding further, its necessary to refer to following judgment which have considerable bearing on present determination-

In **Mohd. Ibrahim v. State of Bihar**, [2009) 8 SCC 751], the Hon'ble Apex court had categorically pointed out that "this Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it is not used for settling scores or to pressurize parties to settle civil disputes".

In **Pepsi food Pvt. Ltd. Vs. Special. Judicial Magistrate,**

(1998) 5 SCC 749, the Supreme Court laid down the gold standard for summoning the accused. This oft quoted judgment has laid down that the court should treat the summoning of the accused as a serious matter involving interference with life and liberty of a person. "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

In **Mehmood ul Rahman Vs. Khazir Mohd. Tunda**, (2015) 12 SCC 420, the Supreme Court highlighted again in detail the duty cast upon the magistracy while dealing with complaint cases. The Court held that "the reasons for summoning has to be assigned to show application of mind. *The Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course.* There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence. . . To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

In **Govind Prasad Kejriwal vs. State of Bihar**, AIR 2020 SC

NAME OF PRESIDING OFFICER- Ms. SHALINI KIRAN
NAME OF COURT- JM II CLASS
PLACE- BEGUSARAI
PARTY DETAILS- CHANDAN KUMAR VS REKHA DEVI & ORS.
CASE NO. - 2201 c/22
DATE OF ORDER- 11/07/2024

1079, the Hon'ble Supreme Court observed that "it cannot be disputed that while holding the inquiry under Section 202 Code of Criminal Procedure the Magistrate is required to take a broad view and a prima facie case. However, even while conducting/holding an inquiry Under Section 202 Code of Criminal Procedure, the Magistrate is required to consider whether even a prima facie case is made out or not and whether the criminal proceedings initiated are an abuse of process of law or the Court or not and/or whether the dispute is purely of a civil nature or not and/or whether the civil dispute is tried to be given a colour of criminal dispute or not".

In **Murari Lal Gupta v Gopi Singh**, [2005]13 SCC 699, on a similar factual background, the Apex Court held that "even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the accused pursuant to which the complainant parted with the money. It is not the case of the complainant that the accused does not have the property or that the accused was not competent to enter into an agreement to sell or could not have transferred title in the property to the complainant. Merely because an agreement to sell was entered into which agreement accused failed to honour, it cannot be said that he has cheated the complainant. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie".

From aforesaid perusal of the complaint petition, S/A of the complainant, deposition of Inquiry witnesses, materials available on the record and after hearing the Ld. counsel for the complainant, this court finds that the fact that accused has not satisfied the terms of agreement even after payment of consideration amount which is the essence of present complaint petition has civil connotation viz specific performance of contract which is beyond the scope and ambit of adjudication of criminal court. It is also not the case of complainant that the accused has misappropriated the money provided by the complainant.

NAME OF PRESIDING OFFICER- MA. SHALINI KIRAN
NAME OF COURT- JM II CLASS
PLACE- BEGUSARAI
PARTY DETAILS- CHANDAN KUMAR VS REKHA DEVI & ORS.
CASE NO.- 2201 /22
DATE OF ORDER- 11/07/2024

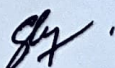
With regard to allegation pertaining to section 406, 420 IPC, it is not the case of the complainant that the accused dishonestly misappropriated the money as this is the violation of the legal contract entered into between them. Thus, prerequisite of dishonest misappropriation for criminal breach of trust under section 405 is not prima facie made out and therefore it cannot be said that there was an offence punishable under Sections 406 of the Code. It is a case of breach of contract and the matter is purely of a civil nature.

It is also not the case of the complainant that any of the accused tried to deceive him either by making false or misleading representations or by any other action or omission. Nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to its retention by any person, or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not deceived. As it is admitted fact that accused have shown the land documents to the complainant and had them in their possession. Therefore, it cannot be said that the accused deceived the complainant in any manner. Since the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Section 420 of the Code.

With regard to offences under section 327 of IPC, 1860. Since no prima facie case made out regarding voluntarily causing hurt to extort money.

Hence this court is of the opinion that there is no sufficient material available on the record to proceed further and no prima facie criminal case under section 406, 420, 327 and 120B of I.P.C, 1860. Accordingly, the complaint petition dated 22/12/2022 is dismissed under section 203 of Cr.P.C, 1973.

O.C is directed to consign the case record in the record room within the stipulated time period.


J.M II Class