

IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 1071 of 2017

Rohit Chaudhary Petitioner
-- Versus --
1.The State of Jharkhand
2.Sunil Kumar Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. A.K. Das, Advocate
Mr. Siddharth Jain, Advocate
For the State :- -----
For the O.P.No.2 :- Ms. Sonal Sodhani, Advocate

8/26.06.2024 Heard learned counsels appearing on behalf of the petitioner as well as the learned counsel appearing on behalf of the Opposite Party No.2. Nobody has appeared on behalf of the State.

2. The prayer in this petition has been made for quashing of the entire criminal proceeding including the order dated 21.01.2017 in connection with C/365 of 2016, pending in the court of learned Sub-Divisional Judicial Magistrate, Ranchi.

3. The complaint case has been filed alleging therein that the accused persons out of ulterior motive has not repaid the outstanding bills to the complainant. It has been stated that the complainant had entered into an agreement with the company of the petitioner for doing the work, against which an amount of Rs.28 lacs approximately has fallen due and he is entitled for reimbursement of the said amount but the accused persons with an ulterior motive and with a dishonest intention after having taken work from him is not making payment of the said dues pursuant to the agreement dated 17.05.2014.

4. Mr. Das, the learned counsel appearing on behalf of the petitioner submits that the complaint case has been filed for recovery of

money and if that fact is there, the only remedy is civil in nature and for that criminal colour has been given. He further submits that false allegations have been made in the complaint petition that the company, namely, M/s Eppelton Engineers Pvt. Ltd promised for the post of Vice President to the complainant for non-payment of existing bills. He submits that a false complaint has been filed and the complainant has not completed the work and due to that the company has suffered a huge loss. The O.P.No.2 even after receipt of the work order did not execute the work rather had already received excess payment that what he has actually performed and subsequently the work had to be done through a third party. He submits that no case of cheating is made out so far as the petitioner is concerned and the petitioner is one of the Director of the said company.

5. Learned counsel for the O.P.No.2 submits that a sum of Rs.28 lacs was due and the company has not paid the same and in view of that the case of cheating is made out. She submits that a promise was made to provide the post of Vice President to the complainant for non-payment of existing bills. She submits that this petition may not be entertained under section 482 Cr.P.C.

6. The Court has gone through the contents of the complaint petition and finds that for recovery of money the present complaint case has been filed.

7. In paragraph no.4 of the solemn affirmation the complainant has stated that money has regularly been sent to the complainant which further suggest that the promise was fulfilled by the company and if the recovery is there, for that the complainant is having remedy of filing appropriate suit. It is crystal clear that there is business transaction and

it was averred in paragraph no.13 of the petition that the complainant has not completed the work and the work was further executed through third party and if such dispute is there that too in a case of commercial transaction, criminal action cannot be allowed to continue. Offence of criminal breach of trust has been defined under section 405 I.P.C. and same is punishable under section 406 I.P.C. In order to bring offence of criminal breach of trust, entrustment should be there. From the very beginning there is no intention of cheating and that is why the learned court has not taken cognizance under section 420 I.P.C. Admittedly, the transaction was with regard to business terms. Mere breach of contract does not constitute offence under section 405 I.P.C. without there being care of entrustment, in this regard reference may be made to the case of **"Satishchandra Ratanlal Shah V. State of Gujarat and Others."** **AIR 2019 SCC 1538.**

8. In view of above facts, reasons and analysis, entire criminal proceeding including the order dated 21.01.2017 in connection with C/365 of 2016, pending in the court of learned Sub- Divisional Judicial Magistrate, Ranchi are quashed.

9. This petition is allowed and disposed of.

10. Pending petition if any also stands disposed of accordingly.

11. If any civil proceeding is there, that will be decided in accordance with law without prejudice to this order.

(Sanjay Kumar Dwivedi, J.)

SI/
A.F.R.