

(2013) 03 JH CK 0027**Jharkhand High Court****Case No:** Cr. M.P. No. 285 of 2012

Shiv Kumar Beri, Rajesh Kumar

Bari @ Rajesh Beri and Deepi

Hans

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: March 20, 2013**Hon'ble Judges:** Rakesh Ranjan Prasad, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Rakesh Ranjan Prasad, J.

This application has been filed for quashing of the entire criminal proceeding of Complaint Case bearing C-1 No. 72 of 2011 including the order dated 13.5.2011 whereby and whereunder cognizance of the offences punishable under Sections 406, 420, 468, 120B of the Indian Penal Code has been taken against the petitioners. It is the case of the complainant that out of the joint efforts of the complainant as well as these petitioners, who happen to be the father, brother and daughter of the complainant and other family members following properties were acquired.

Kumar Guest House (P) Ltd., having Hotel "Sidhartha" in Jamshedpur.

Jamshedpur Motel (P) Ltd., having "Hotel Castle" in Jamshedpur.

Land for Hotel Siddhartha (P) Ltd., at Puri, worth more than Rs. One crore was acquired.

Nilanchal Estate Pvt. Ltd., Bhubneshwar having Hotel Siddhartha. Holding No. 11, Circuit House Area, Bistupur, Jamshedpur.

2. In course of time, when some of the family members wished to have exclusive share in one of those properties, the parties entered into an agreement whereby it was agreed upon that Neelanchal Estate Pvt. Ltd. be given to the share of the

complainant. The petitioners no. 1 and 2 and also accused no. 3, Savita Gupta, sister of the complainant resigned from the Directorship of the said company and relinquished their respective shares in favour of the complainant and handed over their share certificates which duly signed share certificate form with no dues certificate. However, transfer of shares/interest was subject to condition of making payment of a sum of Rs. 49,78,000/- to Savita Gupta (accused no. 3). The petitioner no. 3 also resigned from the Directorship and written information was given to the Registrar of Companies, Cuttack. In lieu of that, complainant relinquished his right, title and interest from the other four properties mentioned hereinabove by means of registered deed of release dated 25.5.1999 in favour of petitioners no. 1 and 2 as well as Savita Gupta (accused no. 3).

3. It is further case of the complainant that in terms of the agreement, entire payments were made to accused no. 3 except a sum of Rs. 27,96,000/-. Subsequently, misfortune struck to the complainant, as a result of which Hotel Sidhartha at Bhubneshwar being run by the Company, Nilanchal Estate Pvt. Ltd. had to be closed down. At that point of time, accused nos. 6, 7 and 8 not the petitioners offered the complainant to purchase the said Hotel at Rs. 3,51,00,000/-. Since the complainant was in a very bad financial position, accepted the proposal whereby they deposited Rs. 15,00,000/- by way of cheque in the loan account of the complainant and that apart, a sum of Rs. 5,00,000/- was given to the complainant. Meanwhile, Punjab National Bank and the State Bank of India, Bhubneshwar Branch took possession of the said Hotel for recovery of their dues. In such eventuality, accused no. 6 and 7 again entered into an agreement on 18.8.2005 whereby consideration amount was re-fixed as Rs. 4,01,00,000/- and out of that a sum of Rs. 25,00,00,000/- was paid to the Bank.

4. Further case is that while the complainant was away from Bhubneshwar, he received information that accused no. 6, 7 and 8 in connivance with other accused persons got the share of the said Hotel transferred in their names in the record of Registrar of Companies, Cuttack on the basis of forged documents and took possession of the Hotel.

5. Further it has been alleged that the petitioners as well as Savita Gupta in conspiracy with Ramnaresh Shanbhag paid off the dues of the Banks in the loan account of the complainant and in lieu of that, these petitioners and other accused persons took a sum of Rs. 1,83,00,000/- from the purchaser Ramnaresh Shanbhag by misrepresenting that they are the Directors/Shareholders of the said Neelanchal Estate Pvt. Ltd. and took possession of the said Hotel from the Bank. Thereupon they broke open the residential house of the complainant, though the said house had never been mortgaged to the Bank and removed all the household articles from the house. Thereupon the complainant immediately contacted Ramnaresh Shanbhag and lodged his objection by putting entire facts before him and then he having realized that it is the complainant who is the rightful owner gave Rs.

2,00,00,000/- to the complainant and also assured that money given to other family members including the petitioners would be taken back and would be given to him.

6. On such complaint, a complaint case bearing C-1 no. 72 of 2011 was registered in which cognizance of the offences punishable under Sections 406, 420, 468, 120B of the Indian Penal Code has been taken against the petitioners, vide order dated 13.5.2011 which is under challenge.

7. Mr. A.K. Das, learned counsel appearing for the petitioners submits that it is the admitted case of the complainant that in spite of transfer of shares in his name by the petitioners and other family members, the complainant failed to make payment of the dues to the accused no. 3 Savita Gupta and thereby the complainant never acquired absolute right, title and interest over the property, Hotel Sidhartha being run by the company, Nilanchal Estate Pvt. Ltd. rather accused no. 3, Savita Gupta and also son and daughter of the complainant remained co-owner of the property. In spite of that, the complainant started acting as he is the sole owner of the property and thereby he took huge loan from the State Bank of India as well as Punjab National Bank, Bhubneshwar Branch which he defaulted in making re-payment of the loan and thereby outstanding dues accrued in crores. The complainant thereafter with ill-intention and to deprive the right of his son and daughter and also accused no. 3 entered into memorandum of understanding on 20.4.2005 with Sanjay Kumar Sahnu and Sangram Kumar Sahoo for sale of the Hotel and that the complainant and his wife who were the Directors of the company allowed those two persons as well as Mrs. Suprav Mayee Sahoo to be the Additional Director. Thereafter an agreement for sale was executed with respect to the said Hotel on 18.8.2005 and the name of the Hotel got changed as Hotel "Castle Plaza". Thereafter wife of the complainant tendered her resignation on 28.3.2006 from the Directorship of the Company which was accepted with immediate effect. After some days, even the complainant resigned from the post of Director on 12.6.2006. Meanwhile, the Bank took over the possession of the said Hotel as the complainant had defaulted in making re-payment of the loan. When accused no. 3 Savita Gupta realized that the complainant is trying to cheat and deprive her of her legitimate rights, she filed an application for winding up of the Company before the High Court, Orissa. In the said case, High Court, Orissa was pleased to direct the official liquidator to take possession of the asset of the company. In course of time, one Ramnaresh Shanbhag came into picture at the instance of Sanjay Kumar Sahnu and Sangram Kumar Sahoo who offered to pay the dues of all the claimants including financial institution. This proposal was acceptable to the complainant and hence, he entered into an agreement with the said Ramnaresh Shanbhag and thereupon the company petition was withdrawn when memorandum of understanding was executed by Ramnaresh Shanbhag agreeing to compensate Savita Gupta by making payment of her outstanding dues along with the interest.

8. Learned counsel in the aforesaid facts and circumstances submits that when the complainant and his wife had resigned from the Directorship of the said Company, Neelanchal Estate Pvt. Ltd., he had had no interest over the property and thereby question of committing offence of cheating and forgery by these petitioners never arises particularly when there is no allegation of complainant being deceived on misrepresentation and also when there has been no allegation against the petitioners to have used any forged documents as genuine.

9. Learned counsel further submits that it is the case of the complainant that the complainant had entered into a memorandum of understanding with Ramnaresh Shanbhag, who had agreed to make payment of all the creditors including financial institution and had also paid money to the complainant and in such situation, when Ramnaresh Shanbhag has come to the possession of the property, question of committing offence of any of the accused persons does not arise and thereby the court has wrongly taken cognizance of the offence of cheating and forgery against the petitioners and hence, the order taking cognizance is fit to be set aside.

10. As against this, Mr. K.P. Choudhary, learned counsel appearing for the opposite party no. 2 submits that as per the case of the complainant, the petitioners no. 1 and 2 had resigned from the Directorship of M/s. Neelanchal Estate Pvt. Ltd. still they along with petitioner no. 3 received a sum of Rs. 31,00,000/-, Rs. 77,00,000/- and Rs. 10,00,000/- respectively. Not only that the petitioners in connivance with others got forged resignation letter dated 12.6.2006 submitted before the Registrar of Companies wherein it was shown that the complainant had resigned from the Directorship of the Company and the petitioners having represented that they are Directors of the Company induced Ramnaresh Shanbhag to purchase the property who on misrepresentation paid money to the petitioners and thereby petitioners by using forged letters committed offence of forgery and also of cheating and under the circumstances, order taking cognizance never warrants to be quashed.

11. Having heard learned counsel appearing for the parties, it does appear that on one hand, plea which is being taken by the petitioners is that in the family arrangement, the property of the company M/s. Neelanchal Estate Pvt. Ltd. was decided to be given in the exclusive share of the complainant, provided a sum of Rs. 49,78,000/- is paid to the accused no. 3, Savita Gupta, sister of the complainant but the complainant paid in part. In spite of that, the complainant tried to sell the property but the property was taken in possession by the Punjab National Bank as well as State Bank of India, Bhubneshwar Branch as huge outstanding was due to be paid by the complainant to the Bank. Subsequently, three persons, namely, Sanjay Kumar Sahnu, Sangram Kumar Sahoo and Mrs. Suprav Mayee, who have also been made accused, came forward to purchase the property when their proposal was accepted by the complainant they even made part payment of consideration amount to the complainant. Subsequently, they brought one Ramnaresh Shanbhag, in to picture who agreed to pay all the dues to the creditors as well as financial

institution and also paid Rs. 2,00,00,000/- to the complainant. In such situation, it was submitted that question of committing offence of forgery and cheating does not arise.

12. Whereas the case of the complainant is that when the property came to his share, he took loan but misfortune struck to him, as a result of which, business of the Hotel went down and therefore, he entered into an agreement with three persons to sell the property and thereby part payment was received but thereafter all the three persons with whom he had entered into an agreement brought one Ramnaresh Shanbhag in to picture who agreed to pay all the dues to the creditors including the financial institution. Thereupon the petitioner misrepresented that they are the Directors of the Company and on making such misrepresentation, they made Ramnaresh Shanbhag to make payment of the money to them which Ramnaresh Shanbhag paid to each of the petitioners and that it was also misrepresented to him that this complainant has nothing to do with the said Company as he has resigned from the Directorship of the Company and this misrepresentation was made on the basis of forged letter dated 12.6.2006 submitted before the Registrar of Companies, Bhubneshwar. However, when the complainant came to know, he put forth the correct picture and then payment was made to him.

13. Thus, the allegation seems to be there of forging document on the basis of which it was claimed that the claimant is no more Director of the Company.

14. Further allegation is there that the petitioners who had no concern with the Company had received money from Ramnaresh Shanbhag when they mis-represented that they are the Directors of the Company.

15. In such situation, the order dated 13.5.2011 under which cognizance of the offence has been taken never warrants to be interfered with. Hence, this application stands dismissed.