

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL MISCELLANEOUS No.31934 of 2015**

Arising Out of PS. Case No.-518 Year-2013 Thana- PATNA COMPLAINT CASE

District-Patna

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1. Ramani Pandey s/o Shri Ashok Pandey, resident of village – Malar, P.S. Charpokhari, District – Bhojpur. At present posted as Branch Manager, Ujjivan Finance Service Private Ltd.
2. Abinash Chaudhary, s/o Amarendra Narain Singh, Credit Manager, Ujjivan Finance Service Private Ltd., Kolkata P.S. New Town, District Kolkata, West Bengal.
3. Vibhas Chandra, s/o Ramchandra Prasad, resident of Ashiyana Nagar, P.S. Rajiv Nagar, District- Patna. At present posted as Regional Business Head, Industrial Loan Eastern Regional Kolkata, P.S. New Kolkata.

... ... Petitioner/s

Versus

1. State Of Bihar
2. Manish Ranjan @ Manish Kumar Ranjan s/o Ramsewak Prasad, resident of Nakhan Mangal Akhara, P.S. - Malsalami, District – Patna.

... ... Opposite Party/s

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*Indian Penal Code---Sections 417, 418, 406, 420, 467, 468, 120, 182, 211---quashing petition against mechanical cognizance order of Judicial Magistrate, Ist Class-cum-Additional Munsif IV Patna—retaliatory complaint case not supported with any affidavit—found false—the Organization was not impleaded as party—criminal case out of ulterior and oblique motive—glaring example of malicious prosecution—every breach of contract does not give rise to offence of cheating—only in those cases breach of contract would amount to cheating where there was any deception played at the outset—in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420—in the absence of specific allegation against the Managing Director of vicarious liability, in the absence of company being arrayed as a party, no proceedings can be initiated against such Managing Director or any officer of a company—requisite allegation required to constitute the vicarious liability.*

*Held:No prima facie case under Sections 417 & 418 made out against petitioners—Order of cognizance of Judicial Magistrate, Ist Class-cum-Additional Munsif IV, Patna quashed and set aside—with all its consequential proceedings.*

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Appearance :	
For the Petitioner/s	: Mr. Y.C. Verma, Sr. Advocate
	: Mr. Prabhakar Nath Rai, Advocate
	: Mr. Adarsh Singh, Advocate
For O.P. No. 2	: Mr. Sadanand Prasad Deo, Advocate
For the Opposite Party/s	: Mr. Anil Kumar Singh No. 1, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA  
ORAL JUDGMENT

Date : 09-04-2024

Heard learned counsel for the petitioners  
and learned counsel for the respondents.

2. The present quashing petition has been  
preferred to quash the order dated 24.02.2015 passed  
in Complaint Case No. 518 of 2013 arising out of Patna



City P.S. Case No. 49 of 2012 where learned Judicial Magistrate, Ist Class-cum-Additional Munsif IV Patna, took cognizance for the offences punishable under Sections 417 and 418 of the Indian Penal Code (in short IPC) against the petitioners.

3. From the complaint petition, it appears that petitioners are Administrative Officers of one M/s. Ujjivan Financial Services Pvt. Ltd. (hereinafter be referred to as the "Organization"), a company, registered and incorporated under Company's Act having its headquarter at Bangalore. The said Organization is a micro finance institution registered under RBI acting under the control and guidance of RBI. It is further submitted that Organization was incorporated with the mission to provide financial services to the poor customers to alleviate poverty. The Organization provides full range of financial services required by the customers. Primarily it serves low income group women customers. It is not like any other chit fund organization.



It is non-depository, non-banking financial company (NBFC). Organization gives loan to the family who are economically very poor, for their economical development and for investment in their small business. The loans are given to maid, servant, street vendors, petty shop owners, poor women doing embroidery, sewing work etc. The headquarter of the Organization is at Bangalore and it has now three hundred branches all over the country including one at Patna City.

4. At the outset, it is submitted by learned senior counsel appearing for the petitioners that earlier Cr. WJC No. 883 of 2012 for quashing the FIR was filed by the petitioners but in the meantime, charge-sheet was submitted exonerating petitioners with recommendation to initiate proceeding under Sections 182 & 211 of the IPC against O.P. No. 2, the aforesaid criminal writ was withdrawn by petitioners. Subsequently on the basis of protest complaint vide order dated 24.02.2015, learned Jurisdictional Magistrate took



cognizance for the offences punishable under Sections 417 & 418 of the IPC in very mechanical manner against the petitioners. Hence, the present petition.

5. It is submitted that petitioners are administrative officers of the Organization, which is a registered company under Company's Act 1956 (as amended in 2013) dealing with finance activities. It is submitted that prior to lodging this case, another case was registered by petitioner no. 1 against Alok Kumar, Manish Ranjan (complainant/informant) and Dina Kumar after getting instructions from the higher authorities regarding misappropriation of funds when he joined Patna City, Branch of the company. In aforesaid background, on information of petitioner no. 1, Patna City Chowk P.S. Case No. 12 of 2012 was lodged against the aforesaid persons for the offences punishable under Sections 406, 420, 467, 468 & 120 B of the IPC, which upon investigation found true, accordingly charge-sheet was submitted. It is further pointed out that as a



retaliatory measures having ulterior and oblique motive, a complaint case was filed by one of the co-accused namely Manish Ranjan before learned ACJM Patna City, which was registered as Complaint Case No. 482 C of 2012 for the offences punishable under Sections 406, 420, 467, 468 & 120 (B) of the IPC, which was sent to police for investigation after lodging FIR while exercising power as available under Section 156 (3) of the Cr.P.C. It is pointed out that upon said complaint Patna City Chowk P.S. Case No. 49 of 2012 was lodged for the offences punishable under Sections 406, 420, 467, 468 and 120(B) of the IPC against petitioners which after investigation found false and whereafter upon protest complaint petition, the present impugned order of cognizance was passed by learned Jurisdictional Magistrate, taking cognizance under Sections 417 & 418 of the IPC against petitioners.

6. While travelling over the argument learned senior counsel submitted that Complaint Case No. 482 C



of 2012, which is the basis of Patna City Chowk P.S. Case No. 49 of 2012 was not supported with any affidavit and therefore by taking a guiding note of **Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others** as reported in **[(2015) 6 SCC 287]** the present proceeding is liable to be quashed and set aside. It is further submitted that the Organization was not impleaded as a party and on this score alone this proceeding is liable to be quashed and set aside. In support of the submissions learned senior counsel relied upon the report of Hon'ble Supreme Court in the case of **Sushil Sethi and Another vs. State of Arunachal Pradesh and Others** as reported in **[(2020) 3 SCC 240]**.

7. Learned senior counsel pressed further through his argument that the cognizance order dated 24.02.2015 is apparently appears to be passed in very mechanical manner without assigning any reasons, while taking a different and deviating note *qua* investigation's





outcome. It is also submitted that this is also a major ground, by taking note of which present proceeding can be quashed and set aside. In support of the submissions learned senior counsel relied upon the report of Hon'ble Supreme Court in the case of **Ratan Lal Patel Vs. Dr. Hari Singh Gour Vishwavidyalaya and Another** as reported in **[(2022) 6 SCC 540]**.

8. While summarizing the argument in totality, learned senior counsel submitted that present criminal case/prosecution appears out of ulterior and oblique motive, which is a glaring example of malicious prosecution and therefore by taking note of **State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335**, present proceeding is fit to be quashed and set aside.

9. Learned APP duly assisted by learned counsel appearing on behalf of O.P. No. 2, while opposing the application submitted from the narration of



complaint petition that it, *prima facie*, suggests that offences punishable under Sections 417 & 418 of the IPC made out against petitioners and therefore finding a case *prima facie* true, where cognizance for the offences punishable under Section 417 & 418 of the IPC was taken against petitioners is not required to be disturbed.

10. It would be apposite at this stage to reproduce Sections 417 & 418 of the IPC for the better understanding of this case :-

**417. Punishment for cheating.**—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.**—Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to



which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

11. It would be apposite to reproduce the para nos. 30 and 31 of the **Priyanka Srivastava Case (supra)**, which reads as under :-

***30.** In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without*



*taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.*

**31.** *We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in*



*accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156 (3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.*

12. It would further be apposite to reproduce the para nos. 7.2, 7.5, 8.1 and 8.2 of the **Sushil Sethi Case (supra)**, which reads as under:-

**"7.2. In Vesa Holdings (P) Ltd. v. State of Kerala, [(2015) 8 SCC**



**2931**, *it is observed and held by this Court that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. It is further observed and held that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is further observed and held that even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. It is further observed and held that the real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.*

**7.5. In Sharad Kumar Sanghi v. Sangita Rane, [(2015) 12 SCC**



**7811]**, *this Court had an occasion to consider the initiation of criminal proceedings against the Managing Director or any officer of a company where company had not been arrayed as a party to the complaint. In the aforesaid decision, it is observed and held by this Court that in the absence of specific allegation against the Managing Director of vicarious liability, in the absence of company being arrayed as a party, no proceedings can be initiated against such Managing Director or any officer of a company. It is further observed and held that when a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability.*

**8.1.** *As observed hereinabove, the charge-sheet has been filed against the appellants for the offences under Section 420 read with Section 120-B IPC. However, it is required to be noted that there are no specific allegations and*



*averments in the FIR and/or even in the charge-sheet that fraudulent and dishonest intention of the accused was from the very beginning of the transaction. It is also required to be noted that contract between M/s SPML Infra Limited and the Government was for supply and commissioning of the Nurang Hydel Power Project including three power generating units. The appellants purchased the turbines for the project from another manufacturer. The company used the said turbines in the power project. The contract was in the year 1993. Thereafter in the year 1996 the project was commissioned. In the year 1997, the Department of Power issued a certificate certifying satisfaction over the execution of the project. Even the defect liability period ended/expired in January 1998. In the year 2000, there was some defect found with respect to three turbines. Immediately, the turbines were replaced. The power project started functioning right from the very beginning—1996 onwards. If the intention of the company/appellants*





*was to cheat the Government of Arunachal Pradesh, they would not have replaced the turbines which were found to be defective. In any case, there are no specific allegations and averments in the complaint that the accused had fraudulent or dishonest intention at the time of entering into the contract. Therefore, applying the law laid down by this Court in the aforesaid decisions, it cannot be said that even a prima facie case for the offence under Section 420 IPC has been made out.*

**8.2.** *It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In **Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008)***



**2 SCC (Cri) 692]** , it is observed and held by this Court that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set



*aside."*

13. It would also be apposite to reproduce the paragraph no. 102 of the **Bhajan Lal Case (supra)**, which reads as under:

*"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*



*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an*



*order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*



14. In view of aforesaid factual and legal discussions, it transpires that petitioners in their official capacity lodged a criminal case registered as Patna City Chowk P.S. Case No. 12 of 2012 for the offences punishable under Sections 406, 420, 467, 468 and 120 (B) of the IPC, which found true upon investigation and accordingly charge-sheet was submitted against O.P. No. 2 as one of the co-accused, where as a retaliatory measures out of ulterior and oblique motive, subsequently Complaint Case No. 482 of 2012 filed before ACJM Patna City, which was sent to police for investigation and found false with recommendation to initiate proceedings against O.P. No. 2 for the offences punishable under Sections 182 & 211 of the IPC. From the perusal and narration of facts and also from the background of allegations it transpires that no *prima facie*, case under Sections 417 & 418 appears to be made out against petitioners. Accordingly, by taking note of guidelines as mentioned in para nos. 1, 5 and 7 of



**Bhajan Lal Case (supra)**, impugned order of cognizance dated 24.02.2015 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Complaint Case No. 518 of 2013 arising out of Patna City P.S. Case No. 49 of 2012, pending before learned Judicial Magistrate, Ist Class-cum-Additional Munsif IV, Patna is hereby quashed and set aside.

15. The application stands allowed.

16. Let a copy of this judgment be sent to learned Trial Court, immediately.

**(Chandra Shekhar Jha, J.)**

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	18.04.2024
Transmission Date	18.04.2024

