

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26136 of 2016**

Arising Out of PS. Case No.-30035 Year-2014 Thana- PATNA COMPLAINT CASE
District-Patna

- =====
1. K.c.srivastava @ Krishna Chandra Srivastava and Anr S/o Late J.P. Srivastava, C/o M/S Prism Cement Limited X-1/170 Krishna Puram, G.T. Road, P.S. Chakeri Kanpur U.P.
 2. K.C. Dey @ Kajal Chandra Dey, s/ Sri Mano Mohan Dey, M/s Prism Cement Limited 12/10/1 C.Y. Chintamani Road Pannalal Road, Darbanga Colony, P.S. George Town, Allahabad U.P.- 211002.

... .. Petitioner/s

Versus

1. State of Bihar
2. Ramesh Kumar @ Ramesh Kumar Sarda S/o Sri Amar Chand Sarda, R/oBajrangbali Chowk, P.S- Forbesganj, Dist.- Araria.

... .. Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 26031 of 2016

Arising Out of PS. Case No.-30035 Year-2014 Thana- PATNA
COMPLAINT CASE District- Patna

- =====
1. Jeevan Aashi and Ors S/o Sri Jai Prakash Srivastava,
 2. Arun Kumar, S/o Sri K.P. Mandal,
 3. Sudhir Upadhyay @ Sudhir Kumar, S/o Late S.P. Upadhyay, All C/o M/s Prism Cement Limited, 4th Floor, P.Jha Complex, Sahi Lane, S.P. Verma Road, P.S. Kotwahi, Dist- Patna-1.

... .. Petitioner/s

Versus

1. State of Bihar
2. Ramesh Kumar @ Ramesh Kumar Sarda, S/o Sri Amar Chand Sarda, R/o Bajrangbali Chowk, P.S.- Forbesganj, Dist.- Araria.

... .. Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 26448 of 2016

Arising Out of PS. Case No.-30035 Year-2014 Thana- PATNA
COMPLAINT CASE District- Patna

- =====
1. S. Ramnath, S/o Sri N. R.S. Subramaniam, Executive Director
 2. D.P. Vadera, S/o Late V.L. Vadera, Both resident of C/o M/s Prism Cement Ltd., Resident of Rahejas, Main Avenue, V.P. Road, P.S.- Santacruz (W), Mumbai-400054.

... .. Petitioner/s

Versus

1. State of Bihar
2. Ramesh Kumar @ Ramesh Kumar Sarda, S/o Sri Amar Chand Sarda, R/o Bajrangbali Chowk, P.S.- Forbesganj, Dist.- Araria.

... .. Opposite Party/s

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Issue in consideration : issue regarding quashing of prima facie case against the petitioners and other accused persons for the offences under Sections 406 and 418 of the Indian Penal Code amid mutual settlement between parties , earlier proceeding quashed with regard to similarly situated co-accused and company not arrayed as an accused

applications under Section 482 of the Code of Criminal Procedure have been filed for quashing the order passed by learned trial court after holding enquiry in Complaint Case - prima facie case against the petitioners and other accused persons for the offences under Sections 406 and 418 of the Indian Penal Code- parties have mutually entered into Settlement- earlier proceeding quashed with regard to similarly situated co-accused – moreover company dealing with business was not arrayed as an accused

Held: From the allegation in the complaint petition, it was held that instant case has been filed on account of business dispute between the parties. The parties have settled their dispute and moreover company was not arrayed as an accused and on this score alone cognizance order is liable to set aside. Further this court had already quashed proceeding with regard to similarly situated co-accused .It was held that In view of aforesaid factual and legal submissions matter appears compromised between the parties, where petitioners paid Rs. 21,51,000/- to O.P. No. 2 as per settlement and as such any further proceeding in this matter would only amount to abusing the process of court of law. Accordingly, in view of guidelines no. 5 as available through Bhajan Lal Case , the order of cognizance passed in Complaint Case along with all its consequential Proceedings qua petitioners was quashed and set aside.

Apex Court decision in the case of State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335 -interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated 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 and 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 –**Discussed [para 8]**

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- 2. K.C. Dey @ Kajal Chandra Dey, s/ Sri Mano Mohan Dey, M/s Prism Cement Limited 12/10/1 C.Y. Chintamani Road Pannalal Road, Darbanga Colony, P.S. George Town, Allahabad U.P.- 211002.

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Versus

- 1. State of Bihar
- 2. Ramesh Kumar @ Ramesh Kumar Sarda S/o Sri Amar Chand Sarda, R/o Bajrangbali Chowk, P.S- Forbesganj, Dist.- Araria.

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with
CRIMINAL MISCELLANEOUS No. 26448 of 2016

Arising Out of PS. Case No.-30035 Year-2014 Thana- PATNA COMPLAINT CASE District- Patna



- 1. S. Ramnath, S/o Sri N. R.S. Subramaniam, Executive Director
- 2. D.P. Vadera, S/o Late V.L. Vadera, Both resident of C/o M/s Prism Cement Ltd., Resident of Rahejas, Main Avenue, V.P. Road, P.S.- Santacruz (W), Mumbai-400054.

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Appearance :
(In CRIMINAL MISCELLANEOUS No. 26136 of 2016)
For the Petitioner/s : Mr. Prakash Chandra Agrawal, Advocate
For the Opposite Party/s : Mr. Ajit Kumar Ojha, Advocate
For the State : Mr. Anant Kumar, APP
(In CRIMINAL MISCELLANEOUS No. 26031 of 2016)
For the Petitioner/s : Mr. Prakash Chandra Agrawal
For the Opposite Party/s : Mr. Ajit Kumar Ojha, Advocate
For the State : Mr. Sanjay Kumar Sharma, APP
(In CRIMINAL MISCELLANEOUS No. 26448 of 2016)
For the Petitioner/s : Mr. Prakash Chandra Agrawal
For the Opposite Party/s : Mr. Ajit Kumar Ojha, Advocate
For the State : Mr. Sanjay Kumar Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 15-03-2024

1. These applications under Section 482 of the Code of Criminal Procedure have been filed for quashing the order dated 16.04.2015 passed by learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 30035(C) of 2014 by which the learned Magistrate after holding enquiry has found *prima facie* case against



the petitioners and other accused persons for the offences under Sections 406 and 418 of the Indian Penal Code.

2. Heard counsel appearing for the parties.

3. Learned counsel for the petitioners submitted that both parties have mutually entered into settlement by intervention of people outside the court. It is further submitted that the complainant now does not want to proceed with the case.

4. It has been further submitted by learned counsel appearing for petitioners that in terms of compromise between the parties petitioners have already paid Rs. 21,51,000/- by Demand Draft to the complainant-opposite party No. 2 as mentioned in paragraph-4 of the supplementary affidavit, moreover this court already quashed proceeding with regard to similarly situated co-accused namely Vijay Kumar Aggarwal through Cr. Misc. No. 23132 of 2016 dated 31.08.2018



5. Learned counsel Mr. Ajit Kumar Ojha appeared on behalf of O.P. No. 2 and accepted notice. It is submitted that opposite party No. 2 after entering into compromise with the petitioners, as submitted above, now not intended to proceed further with present matter.

6. From the allegation in the complaint petition, this Court finds that the instant case has been filed on account of business dispute between the parties. The parties have now settled their dispute and moreover company dealing with business namely "Prism Cement Ltd., was not arrayed as an accused and on this score alone cognizance order is liable to set aside.

7. In support of his submission, learned counsel relied upon the report of Hon'ble Supreme Court in the matter of ***Sushil Sethi and Another vs. State of Arunachal Pradesh and Others*** reported in ***(2020) 3 SCC 240***.

8. It would be apposite to reproduce the paragraph no. 102 of the Apex Court decision in the



case of ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, 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 nay 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.”

9. In view of aforesaid factual and legal submissions that matters appears compromised between the parties, where petitioners paid Rs. 21,51,000/- to O.P. No. 2 as per settlement and as such any further proceeding in this matter would only amount to abusing the process of court of law. Accordingly, in view of guidelines no. 5 as available thorough ***Bhajan Lal Case (supra)***, the order of cognizance dated 16.04.2015 passed by learned Judicial Magistrate, 1st Class, Patna, in



Complaint Case No. 30035(C) of 2014 along with all its consequential Proceedings *qua* petitioners are hereby quashed and set aside.

10. Hence, these applications stand allowed.

11. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.03.2024
Transmission Date	22.03.2024

