

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37562 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- VAISHALI(HAJIPUR)

1. Sanjeev Prasad S/O Shri Ram Briksh Prasad Presently Residing At Plot No. 66A, Kamal Bagh Colony, Wagholi, P.S- Lamikand, Pune, Maharashtra.

.... Petitioner/s

Versus

1. The State Of Bihar

2. Smt. Manju Singh W/O Late Narad Singh Managing Director, N.M. Security Services, Address & Office At- Samudayik Bhawan, Shop No. 11, Rambalak Chowk, P.O+ P.S- Hajipur Town, District- Vaishali.

.... Opposite Party/s

Code of Criminal Procedure, 1973 – Section 482

Indian Penal Code – Sec. 418

Petitioner is an accused in a complaint case brought by O.P. no-2. By the impugned order, summons had been issued against the Petitioner to face trial for the offence u/s-418 of the CRPC IPC by Ld. JM. There was an agreement in the year 2011 between the complainant's company and Petitioner's company whereby complainant's company has undertaken to provide security services to the Petitioner's company on agreed monthly emoluments security guards were deployed by complainant's company in the premises of Petitioner's company. - Thefts in the premises of petitioner's compnay allegedly due to lapse of the securing man – Petitioner's company deducted Rs. 40,000/- and 23,077/- from the wages of the security guards. - Legal notice by complainant's company – Reply to the legal notice was sent by Petitioner's company.

Pepsi Foods Limited vs. Judicial Magistrate, reported in (1998)5 SCC 749 was relied on.

Held that cognizance has been taken against the petitioner without application of Judicial mind in as much as the Petitioner was not a signatory on behalf of his company. The matter relates to allegation of non-performance by the company of the Petitioner in pursuance of the agreement between the parties. There is no allegation of entrustment of property to the petitioner, hence, offence u/s-418 of the IPC is not attracted.

Further, held that from bare perusal of the allegation petition, it does not appear that there is ingredient of dishonest or fraudulent intention of the petitioner from the very inception of the contract. Hence, *in view of the settled principle, the petitioner cannot be criminally prosecuted for the act of the company as there is no law regarding vicarious liability in such matters.* Hence, the impugned order is not sustainable in law.

Impugned order is quashed, and the application stands allowed.

[Para 2, 3, 5, 6 and 7]

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.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar, Advocate

For the Opposite Party/s : Mr. Sunil Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 14-09-2017

Heard learned counsel for the petitioner, State and Opposite Party No.2.

2. Petitioner is an accused in Complaint Case No.2981 of 2012 brought by Opposite Party No.2. By the impugned order dated 20.06.2013 summons had been issued against the petitioner only, in the aforesaid complaint case to face trial for the offence under Section 418 of the Indian Penal Code by Mr. Rajeev Ranjan Singh, learned Judicial Magistrate, 1st Class, Hajipur (Vaishali).

3. Complaint petition would reveal that the complainant is Managing Director of National Multipurpose Security Services, a registered Society. It provides security services to the needy institutions on payment basis. In the year 2011 the Company of the



petitioner A.F.P. Manufacturing Company Pvt. Ltd. entered into an agreement with the complainant-company for providing security guards on agreed monthly emoluments vide agreement at Annexure-3. During the subsistence of the agreement in the year 2012 theft was committed by some unknown person in the premise of the petitioner's company. The Company deducted Rs.40,000/- for the lapse of the security man. Later on, again theft was committed and again Rs.23,077/- was deducted by the Company of the petitioner from the wages of the securities. This time the complainant's company send legal notice to the petitioner's company where the petitioner is Manager H.R. & Administration. Reply to the legal notice was given by the petitioner's company.

4. Submission of the learned counsel for the petitioner is that the law does not fasten vicarious liability unless the statute so provides as held by the Hon'ble Apex Court in **S.K. Alagh V. State of U.P.** reported in **(2008) 5 Supreme Court Cases 662**. In the present case cognizance has not been taken against the company and for the act of the company the petitioner cannot be held criminally liable especially in view of the admitted position that the agreement was entered into in the year 2011; whereas the petitioner entered into his office as Manager HR & Administration in the year 2012 vide Annexure-2. His further contention is that the impugned order suffers from the non-application of judicial mind.



5. Learned counsel for the Opposite-parties submits that since the petitioner is holding the post of Manager, Humane Resources & Administration, he is responsible for the services rendered by the security man of the complainant. However, it has not been controverted that petitioner is not a signatory to the agreement between the parties and he joined the office of his company subsequent to the agreement. Moreover, the act alleged does not disclose a criminal offence said to be committed by the petitioner.

In Pepsi Foods Limited V. Judicial Magistrate reported in **(1998)5 SCC 749** the Hon'ble Apex Court observed as follows regarding duty of the Magistrate while summoning the accused;

“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. 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.”

6. Considering the aforesaid law as well as the facts of this case, I find substance in the submission of the learned counsel for the petitioner that cognizance has been taken against the petitioner without application of judicial mind inasmuch as the petitioner was not a signatory on behalf of his Company. The matter relates to allegation of non-performance by the Company of the petitioner in pursuance of the agreement between the parties. There is no allegation of entrustment of property to the petitioner, hence, offence under Section 418 of the Indian Penal Code is not attracted.

7. From bare perusal of the allegation petition it does not appear that there is ingredient of dishonest or fraudulent intention of the petitioner from the very inception of the contract. Hence, in view



of the settled principle, the petitioner cannot be criminally prosecuted for the act of the Company as there is no law regarding vicarious liability in such matters. Hence, the impugned order is not sustainable in law. Accordingly, the same is quashed and the application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.09.2017
Transmission Date	19.09.2017

