

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49848 of 2018

Arising Out of PS. Case No.-3495 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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Rahul Siddhartha Son of Sri Narendra Kumar Singh, resident of Flat No. 501,
Hari Tower, Buddha Colony, Police Station- Buddha Colony, Patna- 800001
Bihar

... .. Petitioner

Versus

1. State Of Bihar
2. Neeraj Kumar, Son of Sri Gauri Shankar Sharan Singh, Proprietor- M/s
Wintrust Solutions, Having its Office Situated at Ground Floor, Yasoda
Apartment, West Patel Nagar, Police Station- Shastri Nagar, District- Patna
Bihar.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 30534 of 2018

Arising Out of PS. Case No.-3495 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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Pratyush Kumar @ Pratyush Kumar Singh son of Sri Satish Kumar Singh,
Resident of 'Urmila House', Ground Floor, Behind S.B.I. ATM, near Shymal
Hospital mor, Maurya Path Raja Bazar, P.S.- Shastri Nagar, District Patna, at
present residing at Road No- 1, Sarbodya Nagar, East of St. Karen's School,
Gola Road, P.S. Rupaspur, District- Patna, Bihar.

... .. Petitioner

Versus

1. State Of Bihar
2. Niraj Kumar son of Gauri Sharan Singh, Proprietor M/s Win Trust Solution
Company, Head Quarter, at Ground Floor, Yashoda Apartment, West Patel
Nagar, P.S.- Shastri Nagar, District- Patna.

... .. Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 49848 of 2018)

For the Petitioner/s : Mr.Saket Gupta, Advocate
Mr. Prakash Kumar, Advocate
Mr. Anurag Singh, Advocate

For the Opposite Party/s : Mr.Sri Panchanand Pandit, APP
For O. P. No. 2 Mr. Pushpendra kr. Singh, Advocate

(In CRIMINAL MISCELLANEOUS No. 30534 of 2018)

For the Petitioner/s : Mr. Vikash Kumar Sharma, Advocate
Mr. Atul Chandra, Advocate

For the Opposite Party/s : Mr. Fahimuddin, APP
For O. P. No. 2 Mr. Pushpendra Kr. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date : 28-11-2019



Heard learned counsel for the petitioners, learned counsel for the State and learned counsel representing opposite party no. 2.

In Cr. Misc. No. 49848 of 2018 the petitioner has moved this Court for quashing of the order taking cognizance dated 17.09.2016 and issuance of summons to the petitioner by learned A.C.J.M., Patna in Complaint Case No. 3495 (c) of 2015 for the offence under Section 406 of the Indian Penal Code.

In Cr. Misc. No. 30534 of 2018 the petitioner seems to have challenged the order dated 20.01.2018 passed by learned Ist Additional Sessions Judge, Patna in revision case giving rise to Cr. Revision No. 557 of 2016 by which order taking cognizance and issuance of summons to the petitioner dated 17.09.2016 passed by A.C.J.M., Patna in Complaint Case No. 3495 (C) of 2015 has been affirmed.

Facts in brief are identical. The opposite party no. 2 claims himself proprietor of one M/s Win Trust Solution Company which is a proprietorship firm having its office at Patna. The Opposite Party No. 2 entered into an agreement with M/s Punj Lioryd Private Limited for installation of solar plants. It is the case of the opposite party no. 2 that pursuant to the agreement he completed the work and claimed a sum of Rs. 16,75,000/- towards



the work value, the opposite party no. 2 got a sum of Rs. 6 lacs only from the company and the allegation is that the balance amount of approximately Rs. 10,75,000/- were not paid to the opposite party no. 2.

He filed a complaint petition in the court of learned C.J.M., Patna which was referred to the Police Station under Section 156 (3) Cr.P.C. by the learned C.J.M. and thereafter a first information report was lodged. The Police investigated the matter and submitted a final form saying that no material could be found to proceed against the accused persons and the case was said to be based on 'mistake of facts'.

Under these circumstances opposite party no. 2 filed a protest petition and the said protest petition having been registered as a complaint case, the opposite party no. 2 and his witnesses were allowed to depose in course of inquiry under Section 202 Cr.P.C.

It is the contention of learned counsel for the petitioners in both the cases that on perusal of the complaint petition as well as the statement on oath and deposition of inquiry witnesses it would appear that the company M/s Punj Liloyd Pvt. Limited with whom the opposite party no. 2 had entered into an agreement was not impleaded as accused. In the complaint petition no averment



was made that these petitioners were in any way in ultimate control of the affairs of the said company. It is submitted that the petitioner in Cr. Misc. No. 49848 of 2018 was at the relevant time working as Manager of the company and petitioner in Cr. Misc. No. 30534 of 2018 was also employee of the said company and was working as Project Manager. Both the petitioners have since resigned from the company and are now working in different organization.

It is, therefore, common contention that from a bare reading of the complaint petition and the statement on oath no case under section 406 IPC is made out against these petitioners.

Learned counsel for the petitioners have submitted that apart from the fact that no prima facie case is made out against the petitioners from a bare reading of the complaint petition and therefore, this case is covered under one of the conditions stipulated in the case of **State of Haryana v. Bhajanlal** reported in **(1992) Supp (1) SCC 335**. There is one more ground on which the impugned orders are liable to be set aside. Learned counsel has relied upon the judgment of **M/s Indian Oil Corporation v. M/s NEPC India Ltd. and Ors.** reported in **AIR 2006 Supreme Court 2780**. Paragraph '10' of the said judgment has been specifically relied upon.



On the other hand, learned counsel representing opposite party no. 2 has opposed these applications. It is his submission that at this stage when the court below has found a prima facie case against the petitioners, no interference is required by this Court. Leaned counsel representing opposite party no. 2 has also submitted that the opposite party no. 2 has not been paid the entire amount for which he had rendered the work to the company and as such the present complaint has been rightly entertained by the learned court below.

Having heard learned counsel for the parties and on a careful perusal of the records, this Court finds that in the complaint petition as also in his statement on solemn affirmation the complainant has categorically stated that he had filed the case only when the payments were not made to him for the work done under the agreement with the company M/s Punj Liloyd. The inquiry witnesses have also stated the same.

On reading of the materials available on the record, the only conclusion which may be reached without adding or subtracting anything out of the records is that the opposite party no. 2 had claimed to have rendered the work under an agreement with M/s Punj Liyod but according to him, M/s Punj Liloyd has not paid him the claimed amount for the said work. The case has been brought



only for that. So far as these two petitioners are concerned, neither in the complaint petition nor in his deposition on solemn affirmation the complainant has made any allegation which may prima facie constitute an offence under Section 406 of the Indian Penal Code. Section 406 IPC provides for punishment for the offence committed under Section 405 IPC. Sections 405 and 406 IPC are, therefore, extracted hereunder for a ready reference:

“405. Criminal breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

“406. Punishment for criminal breach of trust.-Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

This Court finds that none of the ingredients of Section 405 IPC would be attracted in the facts of the present case. This Court would also reproduced paragraph ‘9’ and ‘10’ of the judgment of the Hon’ble Apex Court in the case of **M/s Indian Oil Corporation** (supra):



“9. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988(1)SCC 692], State of Haryana v. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [1996 (5) SCC 591], State of Bihar v. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) Sc 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4)SCC 168], M. Krishnan v. Vijay Kumar [2001 (8) SCC 645], and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque [2005(1) SCC 122]. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides /malice for wreaking vengeance or to cause



harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

“10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to



irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of UP* [2000(2) SCC 636], this Court observed:

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”



This Court finds that it is an admitted case where the opposite party no. 2 has proceeded to file a criminal case for recovery of his money. This would be an abuse of the process of the court. Therefore, in the opinion of this Court, both in the interest of justice as well as to prevent the abuse of the process of the court it becomes necessary to invoke the inherent power of this Court under Section 482 Cr.P.C. The impugned order taking cognizance dated 17.09.2016 passed in Complaint Case No. 3495 (C) of 2015 in respect of both the petitioners is hereby quashed.

The revisional order dated 20.01.2018 passed in Cr. Revision No. 667 of 2016 is also hereby set-aside.

Both the applications are hereby allowed.

(Rajeev Ranjan Prasad, J)

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| Uploading Date | 29.11.2019 |
| Transmission Date | |

