

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20168 of 2015

Arising Out of PS. Case No.-2846 Year-2012 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

=====

Gyan Singh, son of Late Kishan Singh, resident of Alaknanda, P.S.-Kalkaji,
District -South Delhi.

... .. Petitioner

Versus

1. The State of Bihar
2. Renu Devi Tibirwal, wife of Umesh Pratap Tibirwal, resident of M/s Electro Mechnico Co., Power House Road, Old Fish Market, P.S.-Town, District-Begusarai.

... .. Opposite Parties

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with
CRIMINAL MISCELLANEOUS No. 18467 of 2015

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Kalkaji, District-South Delhi.

... .. Petitioner

Versus

1. The State of Bihar
2. Renu Devi Tibriwal wife of Sri Umesh Pratap Tibriwal Proprietor of M/s. Electro Machnico Co. Power House Road , Old Fish Market , P.S.-Town, District-Begusarai.

... .. Opposite Parties

=====

Appearance :

(In CRIMINAL MISCELLANEOUS No. 20168 of 2015)

For the Petitioner/s : Mr. Alok Kumar @ Alok Kr. Shahi, Advocate
Mrs Archana Shahi, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

(In CRIMINAL MISCELLANEOUS No. 18467 of 2015)

For the Petitioner/s : Mr.Alok Kumar @ Alok Kr. Shahi, Advocate
Mrs. Archana Shahi, Advocate

For the Opposite Party/s : Mr. Madhuranand Jha, APP



CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 28-02-2024

The present application has been filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') for quashing the order dated 20.07.2013 passed in Complaint Case No.2846(C) of 2012, whereby the learned Chief Judicial Magistrate, Begusarai has taken cognizance against the petitioner for the offence punishable under Section 420 and 406 of the Indian Penal Code (for short 'IPC').

2. In brief, case of complainant speaks through complaint that the petitioner, who is the Director of M/s. Harji Engg. Pvt. Ltd. approached the complainant in her branch office at Bhagalpur to supply welding electrodes. The company of the petitioner was working at NTPC, Kahalgaon and after oral agreement and signature over the pad of the firm, the complainant started supplying the petitioner welding electrodes at NTPC, Kahalgaon site on 14.06.2006 till 06.07.2007 for which a bill was raised for Rs.21,13,513/-. It is further alleged that as per agreement, the petitioner was to pay 24% interest *per annum* if the amount was not paid within 30 days from the date of receipt of the goods. The complainant was paid Rs.5 lacs from 23.09.2008 to 28.04.2012 and therefore the petitioner became liable to pay interest on the amount from 14.06.2006



and the total amount is Rs.21,13,513/- and the balance amount was the interest amount. Though the complainant raised demand regularly but, the same has not been paid to the complainant.

3. Mrs. Archana Shahi, learned counsel appearing on behalf of the petitioner submitted that from the perusal of complaint petition on its face, it can be said by any prudent interpretation that no *prima facie* case under Sections 420 and 406 of the IPC made out against the petitioner. In support of submission, learned counsel submitted that opposite party no.2/ M/s. Electro Mechnico Co., Power House Road supplied electrodes at different point of time during the period from 14.06.2006 till 06.07.2007 to the petitioner's company at National Thermal Power Co. (for short 'NTPC'), Kahalgaon, where he is alleged to be a Director of the Company and raised a bill of Rs.21,13,513/-. It is submitted that against the said bill, amount of Rs.5,00,000/- was paid during the period of 23.09.2008 to 28.04.2012 but, subsequently, opposite party no.2 by taking count of 24% *per annum* interest raised a bill to the tune of Rs.44,49,614.76/-. The principal amount of Rs.21,13,515/- is not disputed.

4. It is further submitted by learned counsel that earlier the petitioner approached Hon'ble High Court for



anticipatory bail in complaint case where a condition was imposed to pay Rs.16 lacs to opposite party no.2 at the time of furnishing of bail bond which now paid to opposite party no.2, through two different bank drafts each of Rs. 8 lacs, drawn on Punjab and Sindh Bank and Canara Bank dated. 11.09.2023 and 06.09.2023 respectively. It is submitted that the principal amount for which bill was raised initially now paid to opposite party no.2.

5. It is further submitted by learned counsel that it cannot be said that petitioner acted with dishonest intention with opposite party no.2, from very inception of business deal, as he paid initially Rs.5 lakhs, where balance amount was not paid due to financial hardships. It is submitted that the petitioner had to receive payment from M/s. Hindustan Steel Works Construction Ltd. but, as an arbitration proceedings was pending between M/s. NTPC, Kahalgaon and M/s. Hindustan Steel Works Construction Ltd., petitioner could not receive payment within time and, therefore, he failed to pay the balance amount to opposite party no.2 within stipulated period of time, which does not means that petitioner was of dishonest intention.

6. While concluding argument, learned counsel for petitioner submitted that the company i.e. M/s Harji Engg. (P)



Ltd. (HEWPL) is a registered company under Indian Companies Act, 1956 and, as such, an independent body, which was failed to implead by complainant as a party and on this score alone this cognizance order is fit to be set aside.

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

8. Mr. Jharkhandi Upadhyay, learned APP appearing on behalf of the State opposed the present application.

9. Despite of repeated calls, no one turned up on behalf of opposite party no.2.

10. It would be apposite to reproduce Para-7.1, 7.2, 7.5, 8.1 and 8.2 of **Sushil Sethi Case** (supra), which runs as under:-

7.1. In *State of Haryana v. Bhajan Lal*, [1992 Supp (1) SCC 335], in para 102, this Court has categorised the cases by way of illustration wherein the powers under Article 226 or the inherent powers under Section 482 CrPC could be exercised either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. In para 102, it is observed and held 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 information 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 person 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 Act concerned (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 Act concerned, 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.”



7.2. In *Vesa Holdings (P) Ltd. v. State of Kerala*, [(2015) 8 SCC 293] , 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.

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7.5. In *Sharad Kumar Sanghi v. Sangita Rane*, [(2015) 12 SCC 781], 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.

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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.”

11. From the aforesaid factual and legal discussions/submissions, it appears that the company of opposite party no.2 was entered into business agreement with company of petitioner to supply electrodes for which initially Rs.5,00,000/- was paid but, as petitioner could not receive payment from M/s. Hindustan Steel Works Construction Ltd due to pending arbitration proceedings, he was not in a position to pay balance amount of Rs. 16 lakhs to opposite party no.2 in time. In the meantime, in compliance of bail condition as passed in Cr. Misc. No.18467 of 2015 vide order dated 29.07.2015, the petitioner paid Rs.16 lacs to opposite party no.2 through two different bank drafts, one drawn on Punjab and Sindh Bank dated 11.09.2023 bearing no.578662 and another was drawn on Canara Bank dated 06.09.2023, each bearing no.695493, each for Rs. 8 lakhs. Both were duly acknowledged by opposite party no.2 as said draft was handed over to the clerk of Mr. Vikash Kumar, learned counsel appearing on behalf of opposite party no.2. All these facts suggest that petitioner *prima facie* not of dishonest intention to make out a case against him u/s 406 and



420 of IPC. It further appears that the company of petitioner also not made party in complaint petition, accordingly, by taking note of guiding legal ratio as discussed above in **Sushil Sethi case** (supra), the impugned order taking cognizance against petitioner dated 20.07.2013 passed in Complaint Case No.2846(C) of 2012 by learned Chief Judicial Magistrate, Begusarai with all its consequential proceedings, is hereby, quashed and set aside.

12. Let a copy of the judgment be communicated to the learned Trial Court immediately.

13. In view of aforesaid, there is no need to pass a separate order in Cr. Misc. No.18467 of 2015, and same also stands disposed of.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.03.2024
Transmission Date	04.03.2024

