

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3232 of 2015

Arising Out of PS.Case No. -376 Year- 2013 Thana -PATLIPUTRA District- PATNA

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Chayan Bhattacharjee son of Sri Chitranjan Bhattacharjee resident of Sector 15, Kharghar Navi Mumbai, P.S. Kharghar, District Navi Mumbai, Maharastra - 410210.

.... Petitioner.

Versus

The State of Bihar.

.... Opposite Party.

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Appearance :

For the Petitioner : Mr. Yogesh Chandra Verma, Sr. Advocate.

For the Opposite Party : Mr. B.N. Pandey (App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 29-01-2015 Heard learned Senior counsel for the petitioner, counsel for the informant and learned A.P.P. for the State.

The petitioner being the Executive Director of Gammon India is languishing in custody since 05.12.2014 in a case registered for the offences punishable under Sections 120(B), 406, 420, 467, 468 and 471 of the Indian Penal Code.

The informant Anil Kumar Saraf lodged the present First Information Report on behalf of C.T.S. Industries Ltd., alleging that the Director of C.T.S. Industries Ltd., was approached by the authorities of Gammon India including the petitioner to enter into a contract for supply of crushed aggregate for two projects in Bihar, namely,

'8828/Patna-Muzaffarpur Road Project' and 'SH 69 Sherghati Road Project'. Consequently, C.T.S. Industries Ltd., entered into a contract with Gammon India for supply of crushed aggregate on assurance of timely payment and issuance of work order subject to submission of bank guarantee of Two Crores against mobilization advance and One Crore against performance guarantee. Accordingly, two bank guarantees of Two Crores and One Crore were issued by The State Bank of India, Calcutta, which were submitted to Patna Office of Gammon India. Subsequently, work order no. 11/2010 dated 22.07.2010 was issued by General Manager of Gammon India. The C.T.S. Industries Ltd., supplied the crushed boulders to the tune of Rs. One Crore Fifty Lacs but on raising of bills, no payment was made. Subsequently, another agreement was entered into on 14.05.2010 for road projects of Gammon namely 'SH 69, Bihar' where under supply was made to the tune of Rs. Two Crores but again no payment was made. The extended performance bank guarantee was handed over to the Gammon India for making the due payment but no payment was made. Subsequently, the original bank guarantee was returned but the informant company came to know that without the original bank guarantee the bank guarantee of Rs. One Crore has

been encashed.



It is submitted by learned senior counsel for the petitioner that the petitioner was an Executive Director of Gammon India and he is not the member in the Board of Directors nor he is the party to the agreement between the Gammon India and C.T.S. Industries Ltd., nor he was in any way authorized or involved in day to day transactions of Gammon India. The last extended bank guarantee was valid up to July, 2014. The C.T.S. Industries Ltd., has filed suit in the original jurisdiction at High Court of Calcutta being G.A. No. 159 of 2014/CS No. 11 of 2014 with a prayer restraining bank from charging interest on the cash credit account with regard to debit entry of rupees One Crore which has been encashed by the Gammon India, to reverse the debit entry of rupees One Crore till the disposal of the suit and to pass an order of injunction restraining the respondent Bank from declaring the said account as NPA on the basis of the said non-payment of alleged debit entry of Rs. One crore on 26.10.2013.

The bank has appeared in the said suit and suggested that for encashment of bank guarantee the original bank guarantee paper was not required. The Clause 5.5.5. of Master Circular of Reserve Bank of India dated 01.07.2013 stipulates that a bank



guarantee is a contract between the beneficiary and the bank when the beneficiary invokes the bank guarantee and a letter invoking the same is sent in terms of bank guarantee, it is obligatory on the bank to make payment to the beneficiary. The pleadings in the suit filed before the Calcutta High Court reflect that the payment of Rs. 8,67,70,765/- was made to CTS though the due remained as Rs.1,44,00,548/- which falsifies the accusation levelled in the F.I.R. that no payment was made. Moreover, as per own admission of C.T.S. Industries Ltd., in the plaint, all cause of action arose at Calcutta hence as per own admission of the informant for the same cause of action, the present prosecution is not maintainable at Patna.

It is submitted by learned counsel for the informant that the bank in collusion with the Gammon India fraudulently allowed the encashment of the bank guarantee. The Dispute Committee appointed by Gammon India also found the liability of Gammon India to make payment and for such payment as found by the Dispute Committee the bank guarantee was extended and paragraph no. 48 of the case diary stipulates that the Bank Manager admitted before the Supervising Officer that encashment of bank guarantee can not be made without

production of the original bank guarantee.

Considering the rival submissions of the parties, this fact is not in dispute that the petitioner being the Executive Director of Gammon India is neither party to agreement/contract between the Gammon India and CTS Industries Ltd. nor there is any document on record to suggest that the petitioner was in any way involved in encashment of performance bank guarantee. Moreover, for cause of action for which the present F.I.R. has been lodged the suit is pending before the Calcutta High Court, with specific claim that cause of action arose within the territorial jurisdiction of Calcutta High Court, let the petitioner, above named, be released on bail on furnishing bail bond of Rs.10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned J.M. Ist Class, Patna, in connection with Patliputra P.S. Case No. 376 of 2013.

Learned court below will be at liberty to cancel the bail bonds of the petitioner if the petitioner defaults for two consecutive occasions.

U.K./-

(Dinesh Kumar Singh, J)

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