IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29344 of 2012

Arising out of Complaint Case No. -1733(c) Year- 2011 District- PATNA

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1. M/S Utkarsh Tubes & Pipes Limited is a company duly incorporated under the Companies Act, 1956 and having its registered office at 23A, Netaji Subhas Road, 5th Floor, Room No.22, Kolkata- 700 001.
2. Sunil Bansal, son of Sadhuram Bansal, at present posted as Managing Director of M/s Utkarsh Tubes & Pipes Ltd, at 23A, Netaji Subhas Road, 5th Floor, Room No.22, Kolkata- 700 001.
3. B.C. Munshi, son of late Gyantosh Munshi, at present posted as Manager of M/S Utkarsh Tubes & Pipes Ltd. at 23A, Netaji Subhas Road, 5th Floor, Room No.22, Kolkata- 700 001.
4. Abhijit Dutta, s/o Benoy Krishna Dutta, at present posted as General Manager of M/s Utkarsh Tubes & Pipes Ltd., at 23A, Netaji Subhas Road, 5th Floor, Room No.22, Kolkata- 700 001.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Rajeshwar Prasad, son of Ram Bachan Yadav, proprietor of M/s Baliya Traders situated at G-10, Shashi Complex, Exhibition Road, P.S.- Gandhi Maidan, Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate with Mr. Kamlesh Kumar Singh
For the Opposite Party-State	:	APP
For the Opposite Party No.2	:	Mr. Manik Vedsen, Advocate with Mr. Subhash Chandra Bose, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-04-2015

Heard Mr. N.K. Agrawal, learned senior counsel appearing on behalf of the petitioners, learned counsel for the State and Mr. Manik Vedsen, learned counsel appearing for the complainant- opposite party no.2.

This application under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') is directed against the order 22.11.2011 passed by the Judicial Magistrate, 1st Class, Patna in Complaint Case No.1733(c) of 2011, whereby cognizance has been taken against the petitioners for the offences punishable under sections 406 and 420 of the Indian Penal Code.

A copy of the complaint is placed at Annexure-1 and the complainant in paragraph 1 of the complaint admits to business relation between the parties.

It is stated at the Bar by Mr. Agrawal, learned senior counsel appearing for the petitioners that the business relationship between the two contesting parties is continuing since April, 2003 and which is manifest from the ledger account placed at Annexure-2 to this application.

The sum and substance of the complaint as is reflected from the petition of complaint is that whereas a sum of Rs.2,50,000/- advanced by the complainant for supply of goods was allegedly malafidely adjusted against the past dues by the petitioners, even some defective goods valued at Rs.6,50,000/- when returned by the complainant to the petitioners, they did not respond by replenishing the supply even after receiving the damaged goods on 11.12.2010. The complainant thus complains that the petitioners with dishonest intention have misappropriated a sum of Rs.6,50,000/- by not making supply of goods even after receiving the damaged goods while adjusting Rs.2,50,000/- which was paid by the complainant against future supply. The proceedings further manifest that a dispute has occasioned by use of trade mark registered with the petitioners by the complainant and which is pending before the High Court at Calcutta.

Mr. N.K. Agrawal, learned senior counsel appearing on behalf of the petitioners with reference to the complaint has submitted that in view of the admission by the complainant regarding continued business relationship, the grievance raised is a mere business dispute to be resolved before the appropriate forum and not by way of criminal case. It is further submitted that the complainant has completely failed to establish the dishonest or a criminal intent of the petitioners to misappropriate the amount. On the contrary the position is that it is the complainant himself who remains in outstanding of over Rs.9,00,000/-. Learned counsel in support of his submissions relied upon a judgment of the Supreme Court reported in **(2007)7 SCC 373 (Vir Prakash Sharma vs. Anil Kumar Agarwal)** and with reference to paragraphs 12 to 14 of the said judgment he submits that any allegation under sections 406 and 420 of the Indian Penal Code has to be established by the complainant on the anvil that there was any intention to cheat from the very inception which is completely absent in the present case.

The arguments of Mr. Agrawal were vehemently contested by Mr. Vedsen, learned counsel appearing on behalf of the complainant who with reference to the submissions made by the petitioners in paragraphs 13 and 14 of this application submits that in view of the own admission of the petitioners, it is manifest that they had committed a breach which was backed by criminal intent and that they have misappropriated the amounts advanced by the complainant for supply of goods.

I have heard learned counsel for the parties and I have perused the materials on record.

It is by now well settled that every breach cannot be brought within the confines of criminal intent unless it has a criminal outfit and there is an intent on the part of the accused to deceive the complainant. In so far as the case in hand is concerned, it is the admitted position that there existed a business relationship between the petitioners and the complainant since 2003 i.e. over 12 years and thus it is not a case where an advance had been made by the complainant for the first time to the petitioners which stood misappropriated. On the contrary the documents enclosed with the proceedings manifests a continued relationship which has gone sour in view of the dispute of trade mark pending consideration before the High Court at Calcutta.

While it is the contention of the complainant that an amount of Rs.9,00,000/- stands misappropriated by the petitioners by non-supply of goods, such allegation is being refuted by the petitioners on grounds that there is already an outstanding against the complainant which is more than nine lacs and thus there has been no breach on the part of the petitioners. The Supreme Court in the case of **Anil Mahajan vs. Bhor Industries Ltd**. reported in **(2005)10 SCC 228** has held that a mere failure to keep the promise may be a breach of contract but unless the circumstances are sufficient to prove that there was a culpable intention existing right from the inception, there can be no criminal prosecution even if the aggrieved has other remedies. The law is very well settled on the issue and referring to judgments would only be a multiplicity. The judgment relied upon by Mr. Agrawal in the case **Thermax Limited Vs. K.M. Johny** reported in (**2011) 13 SCC 412** also reiterates such position.

In the circumstances discussed, this Court is satisfied that even if there would be a business dispute between the parties, the materials are not sufficient to constitute a criminal offence punishable under sections 406 and 420 of the Indian Penal Code. A business dispute on performance of contractual breach is to be resolved before a competent forum but a short-cut method of criminal prosecution is not the answer.

For the reasons aforementioned the order dated 22.11.2011 passed by the Judicial Magistrate, 1st Class, Patna in Complaint Case No.1733(C) of 2011 and the entire proceedings arising therefrom cannot be upheld and are accordingly set aside.

This application is allowed.

(Jyoti Saran, J)

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