

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21125 of 2013

Arising Out of PS.Case No. -398 Year- 2011 Thana -SITAMARHI District- SITAMARHI

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Gopal Krishna Singh S/O Late Ravi Nandan Singh Proprietor Of M/S
Anand Saw Mills Gay Bazar, Sonapur, P.S.- Sonpur, District- Saran

.... Petitioner/s

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Anirudh Kumar Sinha, Adv.

For the Opposite Party/s : Mr. Rajendra Singh Shastri (App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 14-07-2015

Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

Petitioner has raised grievance against the order of
cognizance dated 28.11.2012 whereby and whereunder he has
been directed to face trial for an offence punishable under sections
420, 406 of the IPC by the learned Chief Judicial Magistrate,
Sitamarhi in connection with Sitamarhi P.S. Case No.398 of 2011.

Instant case originated on the basis of complaint
petition which was later on sent to the local police for registration
and investigation of the case having an allegation that both the
parties were on business term since before the occurrence. On the
date of occurrence petitioner / accused came and took logs of
timber appertaining to Rs.3,18,450/-. Informant / complainant had
demanded price whereupon accused persuaded him in the



background of their business transaction coming since before and further assured and undertook to pay the entire amount within five days. Accordingly, he allowed accused took away the logs. Subsequently thereof, as payment was not made within the aforesaid stipulated period, petitioner had gone to the place of accused and requested him to pay the entire amount whereupon petitioner / accused issued cheque no.904699 dated 19.11.2010 appertaining to Rs.40,000/- and further assured that rest amount will be paid within a week. Since thereafter complainant had made so many reminders but could not get remaining amount from the petitioner / accused.

It has been submitted on behalf of petitioner that from perusal of the complaint petition, it is apparent that both the parties were on business term and on account thereof, it cannot be said that petitioner had deceived the aforesaid amount. That being so, instant prosecution is bad. Also referred (2005) 10 SCC 261 to suggest that it happens to be civil cause whereupon criminal prosecution is forbidden..

The learned Additional Public Prosecutor opposed the prayer.

Any cause relating to financial transaction or some of the other kind of transactions having occurred during business



transaction so identifiable may lead either to civil cause exclusively or civil cause as well as criminal cause. Whenever there happens to be exclusive civil cause, then in that event, certainly the criminal prosecution will not be allowed. But, where there happens to be fragrance of civil as well as criminal cause then in that event, then in that event quashing of criminal prosecution is forbidden. Whether, criminal intention is coming out or not, that could be gathered from the allegation so put under complaint or FIR. The aforesaid principle has been decided by the Hon'ble Apex Court in *Vijayander Kumar & Ors. v. State of Rajasthan* reported in (2014) 3 SCC 389.

“7. On behalf of the appellants reliance has been placed upon the judgments of this Court in *Thermax Ltd. v. K.M. Johnny* (2011) 13 SCC 412 and *Dalip Kaur v. Jagnar Singh* (2004) 14 SCC 696. There can be no dispute with the legal proposition laid down in *Anil Mahajan v. Bhor Industries Ltd.* (2005) 10 SCC 228 which has been discussed in para 31 in *Thermax Ltd. (2011) 13 SCC 412* that if the complaint discloses only a simple case of civil dispute between the parties and there is an absolute absence of requisite averment to make out a case of cheating, the criminal proceeding can be quashed.

8. Similar is the law noticed in *Dalip Kaur* (2004) 14 SCC 696. In that case the matter was remanded back to the High Court because

of non-consideration of relevant issues as noticed in para 10, but the law was further clarified in para 11 by placing reliance upon the judgment of this Court in *R. Kalyani v. Janak C. Mehta* (2009) 1 SCC 516. It is relevant to extract para 11 of the judgment which runs as follows: (*Dalip Kaur case*(2004) 14 SCC 696, SCC p. 700)

“11. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in *R. Kalyani v. Janak C. Mehta* (2009) 1 SCC 516 is attracted, which are as under: (SCC p. 523, para 15)

‘(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute,

the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.”

Now the allegation so put forward has to be seen. It is apparent from the narration of the written report itself that petitioner had taken away timber worth of Rs.3,18,450/- and for that he assured the complainant/informant to pay the amount within seven days that had gone a go by whereupon the informant rushed to his place and anyhow obtained Rs.40,000/- through cheque on 19.11.2010. The rest amount, till today is found digested at the end of the petitioner. Therefore, it was assurance at the end of petitioner, whereunder he succeeded to lift the timber, and the subsequent conduct suggest his ill motive, on account thereof, did not justify the submission that it led civil cause attracting civil remedy. Consequent thereupon, I do not see it a fit case in order to appreciate submission raised on behalf of petitioner. Petition is rejected.

(Aditya Kumar Trivedi, J.)

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