

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.641 of 2015

Arising Out of PS.Case No. -292 Year- 2011 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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Arnika Kumari D/o Sri Ramphal Sharma Resident of Bahadurpur P.S. - Sartha, P.S.
- Chandi, District- Nalanda.

.... Petitioner

Versus

1. The State of Bihar
2. Arbind Prasad Son of Nagina Prasad Resident of Village - Bahadurpur P.S.-
Chandi, District- Nalanda.

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Satya Ranjan Sinha, Advocate Mr. Salma Kumari, Advocate
For the State	:	Mr. Shantanu Kumar, APP
For the O. P. No. 2	:	Mr. Satyandra Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 01-12-2015

By way of the present application under Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of the order dated 28.10.2014 passed by the learned Judicial Magistrate, 1st Class, Hilsa, in Complaint Case No. 292(C) of 2011 by which the learned Judicial Magistrate has rejected the petition for discharge of the petitioner from the case.

2. One Arvind Prasad filed Complaint Case No. 292-C of 2011 stating *inter alia* that he along with one

Chandeshwar Prasad, a mason, was engaged in construction of the building of the upgraded middle school, but their wages were not paid by the petitioner and co-accused Suresh Prasad, the Headmaster of the school.

3. It has been contended by the learned counsel for the petitioner that co-accused Suresh Prasad died during the pendency of the proceeding before the Court below and hence, the case against him has already been abated. It has further been contended that so far the petitioner is concerned, there is absolutely no allegation against her and the learned Magistrate took cognizance of the offence punishable under Section 406 of the Indian Penal Code (for short 'IPC') and summoned the petitioner only because her name was given in the proforma of the accused in the complaint petition. It has also been contended that the petitioner, being a teacher of the upgraded Middle School, Bahadurpur, had nothing to do with the ongoing construction of the new building of the school. There was neither any agreement between the complainant and the petitioner nor the petitioner was assigned with any role by the State in the ongoing construction work of the school building. It has further been contended that the ingredients of the offence punishable under Section 406 IPC are not attracted at all, in the present case. There is no whisper in the

complaint petition that the petitioner has dishonestly misappropriated any property to her own use or dishonestly used or disposed of any property of the complainant in violation of any direction of the said section.

4. Per contra, the learned counsel for opposite party no. 2 has contended that the complainant being a poor labourer, has been denied wages. He concedes that though there is no specific allegation against the petitioner, he being a teacher of the said school, was also responsible for payment of wages to the complainant and other labourers, who were engaged in construction of the building of the school.

5. I have carefully considered the rival contentions and perused the materials on record.

6. The dispute relates to the non-payment of certain amount pertaining to the wages of the complainant. Apparently, there is no written contract between the parties. It is also an admitted fact that the petitioner was a teacher in the Upgraded Middle School, Bahadurpur and had no authority to make payment of wages to the complainant as she was not the paying authority. The co-accused Suresh Prasad, who died during pendency of the complaint, being was the Headmaster of the school, was the paying authority. Furthermore, apart from the oral

allegations made in the complaint, there is no other document to support the contention of the complainant that he was denied payment of wages by the Headmaster of the school.

7. As noted above, the learned Magistrate has taken cognizance of the offence punishable under Section 406 IPC. Section 406 IPC deals with punishment for the offence of criminal breach of trust as defined under Section 405 IPC. A careful reading of Section 405 IPC shows a criminal breach of trust involves following ingredients: (a) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

8. In order to bring home a charge under Section 406 IPC, the prosecution must prove: (i) that the accused was entrusted with property or with dominion over it; and (ii) that he (a) misappropriated it, or (b) converted it to his own use, or (c) used it, or (d) disposed of it. The gist of the offence is misappropriation



done in a dishonest manner. There are two distinct parts of the said offence. The first involves the fact of entrustment, wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligations which is created.

9. In a proceeding instituted on the criminal complaint, exercise of the inherent powers to quash the proceedings is called for only in case where the complaint does not disclose any offence or is frivolous. It is well settled that the power under Section 482 Cr.P.C. should be sparingly invoked with circumspection. The settled principle of law is that at the stage of quashing the complaint, this Court is not embark upon an inquiry as to the probability, reliability or the genuineness of the allegations made therein.

10. In **Indian Oil Corporation vs. NEPC India Ltd. [(2006) 6 SCC 736]**, the Hon'ble Supreme Court has summarized the principles relating to exercise of jurisdiction under Section 482 Cr.P.C. to quash complainants and criminal proceedings in para 12, which reads as under;-

“12. 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 vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 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 vs 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 malafides/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 proceeding 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.”

11. Thus, this Court is concerned only with the question whether the averments made in the complaint taken on their face value make out the ingredients of criminal offence or not.

12. In the present case, looking at the allegations in the complaint on the face of it, I find that no allegation is made attracting the ingredients of Section 405 IPC. Excepting the bald allegation that the accused person did not make payment of wages to the complainant, there is no iota of allegation as to the dishonest intention in misappropriating any amount. There is also no evidence that the petitioner had been entrusted with property or, entrusted with dominion over any property. In order to attract the ingredients of an offence punishable under Section 406 IPC, it is not sufficient to show that money to be paid as wages has been retained by the accused. It must also be shown that the accused was entrusted with the same and he dishonestly retained the same. The mere fact that the accused did not pay the money to the

complainant does not amount to the criminal breach of trust.

13. In view of the discussions made, hereinabove, even if the allegations made in the complaint taken at their face value are true, in my view, the basic essential ingredients of offence of criminal breach of trust are missing. Accordingly, the impugned order dated 28.10.2014, passed in Complaint Case No. 292 (C) of 2011, is hereby quashed. Consequently, Complaint Case No. 292(C) of 2011 and all the proceedings emanating therefrom are also quashed.

14. In the result, the application is allowed.

(Ashwani Kumar Singh, J.)

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