

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20797 of 2015

Arising Out of PS.Case No. -7 Year- 2014 Thana -GAYA COMPLAINT CASE District- GAYA

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P.K. Dam @ Pradeep Kumar Dam, son of Late Subodh Chandra Dam, partner M/s
P.S. Enterprises, P.O.- Nibra, NH-6, Ankur Toli Check Post, P.S. - Damjur,
District- Hawrah (West Bengal).

.... Petitioner

Versus

1. The State of Bihar
2. Zulfekar Ali, M/s. Nabil Enterprises, resident of Gewal Bigha More, West
Khalish Park , P.S.- Rampur, District- Gaya.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Vinay Mistry, Advocate

For the Opposite Party No.2: Mr. Pranav Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-09-2015

The present application under Section 482 of the Code
of Criminal Procedure (For short 'the Cr. P.C.') has been filed for
quashing of the order issuing process dated 01.12.2014 passed by
the court of learned Sub-Divisional Judicial Magistrate, Gaya in
Complaint Case No. 07 of 2014/402/2014 after finding a prima
facie case to be made out against the sole petitioner under Sections
323, 420 and 504 of the Indian Penal Code.

2. The facts of the case in brief are that a complaint



case was lodged in the court of Chief Judicial Magistrate, Gaya alleging therein that the complainant had purchased a compressor on 30.10.2012 from the four accused persons viz., the petitioner, M/s Jaikar Tehno Pvt. Ltd, M/s P.S. Enterprises, M/s ELGI Equipments Ltd. and M/s. CUMMINS Engine after taking loan of Rs. 17, 80,000/-. It is stated that the compressor was commissioned on 20.11.2012 and the engine thereof was commissioned on 19.12.2012. It has been alleged that after a few days of purchase, the compressor of engine mal-functioned the complainant informed the M/s ELGI Equipments and M/s CUMMINS Engine with regard to non-functioning of compressor and engine. The engineers visited site several times and repaired the equipment but all in vain. It has been further alleged that regarding mal-functioning of the equipment complaints were sent to the petitioner, Jaikar Techno Pvt. Ltd, ELGI Equipments Ltd. and M/s. CUMMINS Engine, Pune by E-mail. After a lot of efforts taken by the complainant, a service engineer of M/s. P.S. Enterprises, namely, Vishwajeet Rai visited site of the complainant on 31.12.2013. He checked the equipment and recommended for its replacement as it had manufacturing defects. It has also been alleged that on 22.01.2014, a service engineer from Jaikar Techno Pvt. Ltd., an authorized dealer of Cummins field service reported that due to mechanical failure, the



engine could not be repaired and needs to be replaced. It has been further alleged that on 10.03.2014 some miscreants also threatened the complainant with dire consequences and it is alleged that the miscreants had stated that they have been sent by M/s. P.S. Enterprises. It is stated that the accused persons in conspiracy with each other have intentionally and deliberately cheated the petitioner as a result of which, he has sustained huge loss.

3. After institution of the complaint, the complainant was examined on solemn affirmation under Section 200 of Cr. P.C. Three other witnesses were also examined on behalf of the complainant in support of his case in inquiry conducted under Section 202 Cr. P.C. After examining the complainant and the witnesses, the learned S.D.J.M. Gaya issued process against the sole petitioner vide impugned order dated 01.12.2014.

4. Learned counsel for the petitioner has submitted that the petitioner is one of the partners of M/s. P.S. Enterprises, holding 50% of the share, having its registered office at Kolkata and the firm deals in marketing and distribution of Construction and Mining Air Compressors and its spare parts. The compressor and its parts are manufactured by ELGI Equipments Ltd., Coimbatore and diesel engines are manufactured by CUMMINS India Ltd., Pune. The compressors are fitted to the diesel engine and the ELGI



Equipments assembles the compressor and diesel engine and after testing the assembly, it supplies the same to the dealer. The assembled compressor is supplied with a sealed box as a kit consisting of various brochures of both the manufacturers and the Warranty Certificate from both the manufacturers, namely, ELGI Equipment Ltd. and CUMMINS India Ltd. separately. The seal of the box is opened in present of the owner of the machine and is handed over to the owner by the service engineer after initially commissioning. The service engineer of the CUMMINS India Ltd. and ELGI Equipments Ltd. check the engine separately before handing over the machine to the customer.

5. He has further submitted that the standard warranty is for 12 months or 2000 hours from the date of commissioning, whichever occurs first and as per the instructions of the warranty certificate, the warranty for the compressor is under the purview of ELGI Equipment Ltd. and that of the Engine is under the purview of CUMMINS India Ltd. The services under the warranty are rendered through the Area Dealer of both the manufacturers and the final decision on the warranty or manufacturing and workmanship defect rests on both the manufacturer. He submits that as per standard terms all manufacturing and workmanship defects are removed/repaired at site or at the respective manufacturing

workshop as decided by the manufacturer.

6. He has further contended that the new machine was commissioned by P.S. Enterprises on 20.11.2012 and after running the machine for 6.3 hours (*Machine Running Hours*). The service engineer from Jaikar Techno Pvt. Ltd., Patna (the representative of the CUMMINS India Ltd.), formally checked and inspected the engine on 13.12.2012 at 45 *Machine Running Hours*. It had been reported that the performance of the compressor and the engine was upto the satisfaction of the customer. The compressor and the engine was also attended by the service engineer of ELGI Equipments Ltd. and by CUMMINS India Ltd. through their dealers during its warranty period and both were found in good running condition for which the complainant had also given his satisfaction.

7. He has submitted that during the warranty period, the compressor was attended by four times by the engineers of P.S. Enterprises on behalf of the ELGI Equipments Ltd. and as per the terms of the warranty and the compressor/machine was found to be running as per the standards prescribed and to the satisfaction of the customers which report was signed by the customer. During the same time, the service engineer from the dealer of CUMMINS India Ltd., namely, M/s Jaikar Techno attended to their engines 16 times upto the 1752 *Machine Running Hours*, and was found that

the engine was running to the prescribed standards.

8. He has further submitted that as a goodwill gesture CUMMINS India Ltd. had replaced several parts without charging the complainant. The CUMMINS India Ltd. fuel-pump costing Rs. 2, 57,890/- free of cost and the machine was attended on regular basis by M/s Jaikar Techno and by service engineer of M/s ELGI Equipment. Even upto the very last period of warranty i.e. 1994 hours that regular service was provided by the two companies to the customer and it was on the last visit on 22.01.2014 that the customer/complainant used force against the service engineers of CUMMINS India Ltd. to have it recorded that the engine suffers from manufacturing defect. The CUMMINS Engine Dealer, Jaikar Techno Pvt. Ltd. informed the petitioner's company through an e-mail about the visit of their engineers on 22.01.2014 at the complainant's premise and further informed that the complainant had misbehaved with the engineers and also kept them as hostages and the engineers were threatened and compelled to write down in the FSR for replacement of the engine.

9. He has further submitted that the service engineer attended the equipment against every complaint made by the complainant and every time the equipments were property inspected and checked and found to be running in good condition without any

trouble. As per the instructions of the warranty certificate, the warranty had been extended by the manufacturer and for the replacement of any parts of the machine the dealer is not entitled to do the same as the replacement rests within the purview of the manufacturer.

10. Based on the aforesaid submissions, learned counsel for the petitioner contended that the dispute in the present case relates to deficiency in service to a consumer by the supplier and the manufacturer and there are hardly any element of criminal offence.

11. He has submitted that no mind was applied by the court below would be apparent from the fact that the cognizance has been taken under Section 323 of the IPC even when there is no such allegation in the entire complaint or in the deposition. Further, the ingredients under Section 504 of the IPC were also not attracted for the complaint but yet cognizance was taken under the said Section which further goes to show that there has been total non-application of mind on the part of the court below.

12. He contended that the complaint lacks the foundational facts for maintaining the complaint against the petitioner. In the entire complaint there is no allegation at all against the petitioner as the managing partner/partners of P.S. Enterprises

and as being in-charge of the affairs of the firm at the relevant time and, as such, there can be no vicarious liability of the partner of the firm for the acts of the firm more so, when there is no allegation against the petitioner.

13. He has submitted that the allegations contained in the complaint even if taken at their face value do not disclose the ingredients of the offence for taking cognizance either under Section 420 or 504 of the IPC.

14. On the other hand, Mr. Pranav Kumar, learned counsel for the opposite party no. 2, has submitted that the opposite party no. 2 had purchased the equipment from the petitioner i.e., compressor with diesel engine which is primarily used in drilling Bore Well for getting ground water. Since the opposite party no. 2 was unemployed, he purchased the same after taking loan from the State Bank of India, Main Branch, Gaya and the complainant is paying huge sum against Equated Monthly Installment (EMI) of the loan account. He submits that the equipment was defective from the day one from its commission. According to him, the petitioner had assured the opposite party no. 2 about the quality of machine and had stated that since he is dealing with machine for a long time, it is quite good and fit to be purchased. He has contended that on 31.12.2013, one Mr. Vishwajeet Rai, a service engineer from the



firm of the petitioner, namely, P.S. Enterprises checked the equipment and recommended for replacement of equipment as it had manufacturing defects. He further contends that the fuel-pump of Rs. 2, 57,890/- was replaced by CUMMINS Engine since the machine had inherent manufacturing defect. However, in spite of replacement of the fuel-pump, the machine could not come to an order.

15. It has further been contended that the petitioner and others tried to rectify the manufacturing defects of the equipment, but they failed to do that. The opposite party no. 2 is running from pillar to post to get the machine replaced but all his efforts went in vain. He has submitted that the learned Sub-Divisional Judicial Magistrate has rightly summoned the petitioner, as the relevant materials for constituting the offences punishable under Sections 420, 323 and 504 IPC are present on the record.

16. He has submitted that the petitioner being partner of M/s P.S. Enterprises is jointly as well as individually liable for any act of partnership firm unlike the share-holder of the company.

17. I have carefully considered the rival contentions and also perused the impugned order and the materials on record.

18. In a proceeding instituted on criminal complaint, exercise of inherent powers to quash the proceeding is called for

only in case where the complaint does not disclose any offence or is frivolous.

19. It is well settled that the power under Section 482 Cr. P.C. should be sparingly exercised with circumspection. It should be exercised to see that the process of law is not abused or misused. The settled principles of law is that at the stage of quashing the complaint, the High Court is not to embark upon inquiry as to the probability or reliability or the genuineness of the allegations made therein.

20. In **Smt. Nagawwa Vs. Veeranna Shiwalingappa Konjalgi and Ors. [1976 (3) SCC 736]**, the Supreme Court enumerated the cases where an order of the Magistrate issuing process against the accused can be quashed or set aside as under:-

“(1) Where the allegation made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complainant does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach to a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no offence or on materials which are wholly irrelevant or inadmissible;

(4) Where the complaint suffers from fundamental legal defects such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The Supreme Court pointed out that the cases mentioned are purely illustrative provide sufficient guidelines to indicate the contingencies where the High Court can quash the proceedings.

21. In **Indian Oil Corporation Vs. NEPC India Ltd. & Ors.** [(2006) 6 SCC 736], the Supreme Court has summarized the principles relating to exercise of jurisdiction under Section 482 Cr. P.C. to quash complaints and criminal proceedings as under:-

“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 Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692; State of Haryana v. Bhajan Lal , 1992 Supp (1) SCC 335; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194; Central Bureau of Investigation v. Duncans Agro Industries Ltd., (1996) 5 SCC 591;



State of Bihar v. Rajendra Agrawalla, (1996) 8 SCC 164; Rajesh Bajaj vs. 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 v. Vijay Singh, (2001) 8 SCC 645 and Zandu Pharmaceutical 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 *mala fides*/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.”

22. Referring to the growing tendency in business

circles to convert purely civil disputes into criminal cases, in paragraph 13 and 14 of the Indian Oil Corporation (supra), it was held as under:-

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain

principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

23. In State of Karnataka Vs. L. Muniswamy & Ors. [(1977) 2 SCC 699], the Supreme Court observed that the wholesome power under Section 482 Cr. P.C. to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the



ends of justice require that the proceedings ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has not to be administered according to laws made by the legislature. It was held in this case in paragraph 7 as under:-

7. The second limb of Mr. Mookerjee's argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of

Criminal Procedure, 2 of 1974, provides that:

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

This Section is contained in Chapter XVIII called "Trial Before a Court of Session." It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the new Code, which corresponds to Section 561-A of the Code of 1898, provides that:

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to

make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient

jurisdiction.”

24. In **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque & Anr. [(2005) 1 SCC 122]**, the Supreme Court observed in paragraph 8 as under:-

“8.It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

25. In **G. Sagar Suri & Anr. Vs. State of U.P. & Ors. [(2000) 2 SCC 636]**, the Supreme Court observed that it is duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly, when matters are essentially of civil nature.



26. Coming back to the facts of this case even assuming the allegations to be correct, the same has reference to the actions/inactions of the four firms/companies and the petitioner is one of the partners of the one of the four firms which has been made accused in the present case. Admittedly, firm of the petitioner, namely, M/s P.S. Enterprises is not a manufacturer of equipment in question. It is surprising that the learned S.D.J.M. Gaya issued process against the petitioner alone when there were allegation of deficiency of service and supply of defective machine manufactured by M/d ELGI Equipment Ltd. and M/s. CUMMINS India Ltd. The complaint lacks the foundational facts necessary for constituting the offence alleged. The complaint itself discloses nothing but deficiency in service, as the complainant's grievance is that the machine that had been supplied suffered from manufacturing defect which grievance can be redressed by approaching the consumer forum or civil court and apparently a civil dispute has been given a criminal colour by mere ornamentation.

27. Section 420 IPC deals with cheating. The essential ingredients of Section 420 IPC are:-

- (i) Cheating;
- (ii) Dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable

of being converted into a valuable security,
and;

- (iii) *mens rea* of the accused at the time of making
the inducement.

28. In the present case, looking at the allegations in the complaint from the face of it, I find no allegations are made attracting the ingredients of Section 420 IPC. There is no allegation of inducement either fraudulent or dishonest on the part of the petitioner to deceive the complaint to deliver any property. I further find that the learned Sub-Divisional Judicial Magistrate, Gaya took cognizance of the offence against the petitioner under Section 323, 504 IPC without judicial application of mind. The ingredients of these two offences are not at all attracted in the present case against the petitioner. I have no iota of doubt in my mind that the present case being in the nature of civil dispute is manifestly attended with mala fide. Even if, all the allegations made in the complaint at their face value are taken to be true, in my view, no prima facie case is made out and the essential ingredients of Sections 323, 504 and 420 IPC are missing.

29. The Supreme Court in **M/s. Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Others.** [AIR 1998 SC 128], has observed summoning of an accused in a criminal case is a



serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused. Apparently, I find that there is total lack of application of mind on the part of the Magistrate in passing the impugned order whereby he has summoned the petitioner.

30. Since I have already held that no case of voluntarily causing hurt as prescribed under Section 323, cheating and dishonestly inducing delivery of property as prescribed under

Section 420 and intentional insult with intent to provoke breach of peace as prescribed under Section 504 IPC is made out against the petitioner, the prosecution of the petitioner under Sections 323, 420 and 504 IPC is liable to be quashed.

31. Accordingly, the impugned order issuing process dated 01.12.2014 passed by the court of learned Sub-Divisional Judicial Magistrate, Gaya in Complaint Case No. 07 of 2014/402/2014 and all the proceedings emanating therefrom, are hereby quashed.

32. The application stands allowed.

(Ashwani Kumar Singh, J.)

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