

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42081 of 2012

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1. Rajiv Ranjan Gupta S/O Sri Dina Nath Gupta, Proprietor of Zee Saheb Harihar Chamber, Boring Road, Patna-1
 2. Smt. Shanta Devi W/O Late Vidyadhar Prasad Singh,
 3. Ravi Ranjan Kumar S/O Late Vidyadhar Prasad Singh
 4. Chitranjan Kumar S/O late Vidyadhar Prasad Singh
 5. Shiv Ranjan Kumar Singh S/O Late Vidyadhar Prasad Singh
Resident of Village- Ghoswari, P.S- Bakhtiyarpur, District- Patna,
Presently Residing At 62-A, Patliputra Colony, P.S- Patliputra, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Jay Kumar Singh, Director, CECON Engineers India, Pvt.Latd., having its Registered Office at Bank Colony, St. Karen's School, Gola Road, Patna- 810503

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Pd. Singh, Senior Advocate
Mr. Aaruni Singh, Advocate
For the Opposite Party/s : Dr. Mayanand Jha, (APP)
For the opposite party no.2 : Mr. Jagannath Singh, Advocate
Mr. Nirbhay Prashant, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

3 16-04-2015 This petition under Section 482 of the Code of Criminal Procedure is filed, with a prayer to quash the proceedings in Complaint Case No.1627 (C) of 2011, on the file of Sri Krishna Kumar, Judicial Magistrate, 1st Class, Patna.

The 2nd opposite party herein filed the complaint under Section 200 Cr. P.C. alleging that the petitioners herein committed crime punishable under various provisions, including under Section 420 of the Indian Penal Code.

The petitioners contend that the dispute is purely

civil in nature and, in fact, not only the suit, but also the arbitration proceedings are initiated, that too, at the instance of 2nd opposite party itself. They submit that initiation of complaint itself is malafide, and that the proceedings cannot be maintained at this stage.

Heard Sri Akhileshwar Prasad Singh, learned Senior Counsel for the petitioners, and Sri Jagannath Singh, learned counsel for the opposite party no.2.

The 2nd opposite party is a builder and it entered into a contract with the petitioners for construction of a building. In pursuance of the agreement, the 2nd opposite party is said to have incurred expenditure of about Rs.3 crore for construction, and at that stage, the petitioners have violated the terms of tripartite agreement and caused huge loss to it.

Even where the dispute between the parties is predominantly civil in nature, there may be an occasion for filing a private complaint, if the purport of the complaint does not constitute any civil dispute. In the instant case, however, it is clear that the difference of opinion between the parties is as to the nature of working of the tripartite agreement. The 2nd opposite party itself approached this Court by filing Request Case No.1 of 2012 under Section 11 of the Arbitration and

Conciliation Act, 1996. The same was allowed by this Court on 22.01.2014 and the matter was referred to arbitration. Once the arbitration proceedings have commenced between the parties, all the differences can be brought under the purview of the same. It is only when the arbitrator or the concerned Court records a finding that any of the parties have committed acts of cheating that there may be a possibility for initiating proceedings either through the police or by filing a private complaint.

Therefore, this petition is allowed and the proceedings in complaint Case No.1627 (c) of 2011, pending in the Court of Sri Krishna Kumar, Judicial Magistrate, 1st Class, Patna, is quashed, subject to however condition that in case the Arbitrator, in the going on arbitration, makes an observation that the petitioners herein have resorted to any act of cheating, it will be open to the 2nd opposite party to submit a complaint.

(L. Narasimha Reddy, CJ)

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