IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10884 of 2012

Arising Out of Complaint Case No. -2658(C) Year- 2012 Thana -null District- PATNA

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1. Reliance Infratel Limited, Having Its Registered Office at Reliance Communication Limited Dhirubhai Ambani Knowledge City, Thane Belapur Road, Navi Mumbai- 400709
2. Anil Dhirubhai Ambani S/O Late Dhirubhani Hirachand Ambani Dhirubhai Ambani Knowledge City, Thane Belapur Road, Kopar Khairane, Navi Mumbai- 400709 (Maharashtra)
3. Sunil Mundra S/O Late Onkarlal Mundra 5th Floor, A Wing, Reliance Adag House, Besides Reliance Petrol Pump, 100 Ft Road, Shyamal Karnawad Road, Stalitic, Near Prahalad Nagar, Ahmedabad- 380015 (Gujarat)
4. Satish Seth S/O Late Parshuram Seth Dhirubhai Ambani Knowledge City, Thane Belapur Road, Kopar Kahirane, Navi Mumbai- 400709 (Maharashtra)
5. Shailendra S Jain S/O Shobha Chandra Jain 5th Floor, A Wing, Reliance Adag House, Besides Reliance Petrol Pump, 100 Ft Road, Shyamal Karnawad Road, Stalitic, Near Prahalad Nagar, Ahmedabad- 380015 (Gujarat)
6. Prakash Bumb S/O Late Gyanchand Bumb Dhirubhai Ambani Knowledge City, Thane Belapur Road, Kopar Kahirane, Navi Mumbai- 400709 (Maharashtra)
7. Raj Kishore Prusty S/O Sudam Prusty Biscomaun Tower, 14th and 15th Floor, West Gandhi Maidan, Patna- 800001
8. Kunwar Kanhaiya S/O Dharnidhar Singh Biscomaun Tower, 14th and 15th Floor, West Gandhi Maidan, Patna- 800001
9. Binod Agrawal S/O Ghisaram Agarwal 5th Floor, A Wing, Reliance Adag House, Besides Reliance Petrol Pump, 100 Ft Road, Shyamal Karnawad Road, Stalitic, Near Prahalad Nagar, Ahmedabad- 380015 (Gujarat)

.... Petitioner/s

Versus

1. The State Of Bihar
2. M/S Jai Maa Parmar Engineers Private Limited Through Its Director Chunnu Singh Resident Of Ny/148-D, New Yarpur, Janta Road, Devi Asthan, Gardanibagh, Patna- 800001.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vindhya Keshri Kumar, Sr. Adv.
Mr. Rakesh Kumar Sinha, Adv.
Mr. Anuj Prakash, Adv.
For Opposite Party No.2 : Mr. Ramakant Sharma, Sr. Adv.
Mr. Sanjeev Kumar, Adv.
For the State : Mr. Madhura Nand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT
Date: 28-09-2015

By way of the present application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioners seek quashing of the entire proceeding including the order dated 25.01.2012 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 2658(C) of 2011 whereby the petitioners have been summoned to face trial under section 420 of the Indian Penal Code (for short 'IPC').

2. The relevant averments made in the Complaint instituted by the Complainant (Opposite Party No.2) read as under :-

(a) The Opposite Party No.2 was working as a Civil Contractor and General Supplier/Service Provider of the petitioners. The Petitioner No.1 is a private mobile telephone network company and Petitioners No. 2 to 9 are its officers and looking after the business activities of the Petitioner No.1 and they are also responsible for day-to-day activities of the Petitioner No.1.

(b) In the month of March, 2007, the Petitioners No. 3, 4, 8 and 9 visited the office of the Opposite Party No.2 and introduced themselves as officers of the Petitioner No.1. They represented that they are in search of good civil work contractor and general item/goods provider for the construction and maintenance of mobile tower of Petitioner No.1 for providing best mobile services to their customers. The Petitioners No. 3, 4, 8 and 9 assured the Opposite Party No.2 that it would make good income and profit if it would make mobile towers for the Petitioner No.1.

(c) Believing the representation/assurance given by the Petitioners No. 3, 4, 8 and 9 to be true, the Opposite Party No.2 visited the office of the Petitioner No.1 and met the Petitioners No. 5 and 7, who introduced themselves to be senior officers of the Petitioner No.1 and in presence of the Petitioners No. 3, 4, 8 and 9 confirmed the representations made by the Petitioners No.3, 4, 8 and 9. Believing the representations/ assurances to be true, the Opposite Party No.2 started the work assigned by the Petitioners.

(d) After seeing the conduct of the Petitioners, the Opposite Party No.2 asked for final settlement of account. After final settlement of account, a sum of Rs.36,99,819.84 was alleged to be due and inspite of several verbal/ written request the Petitioners did not pay the said amount.

(e) The Opposite Party No.2 thereafter sent a legal notice dated 18.07.2011 to the petitioners to which the Petitioner No.1 replied on 04.08.2011 denying the claim of the Opposite Party No.2.

3. One Chunnu Singh, one of the Directors of the

complainant Company was examined on solemn affirmation and in course of enquiry conducted under section 202 Cr.P.C. two witnesses, namely, Brahma Nand Singh and Ashok Kumar Singh were examined in support of the complaint. After examining the Director of the complainant company and its witnesses, the Magistrate summoned the Petitioners under section 204 Cr.P.C. finding a prima facie case to be made out under section 420 IPC.

4. Mr. Vindhya Keshri Kumar, learned Senior Counsel appearing on behalf of the Petitioners submitted that the Petitioner No.1 a Company incorporated under the Indian Companies Act, 1956 builds, owns and operates telecommunication towers, optic fiber cable network and related assets; and provides these passive infrastructure assets on a shared basis to wireless and other communications service providers, as well as to non-communications customers under long term contracts. The Petitioner No.2 at the relevant time was a Director of the Petitioner No.1 and the Petitioners No.3 to 10 were not the employees of the Petitioner No.1 at the relevant point in time. He has submitted that the correct fact is that even though the Opposite Party No.2 had been issued various work orders, it had not satisfactorily completed them. The Opposite Party No.2 was informed of the various shortcomings of the works being performed by it vide letters dated 21.03.2009, 13.11.2009, 04.01.2010, 11.02.2010, 26.02.2010 and 25.03.2010. However, the

Opposite Party No.2 did not take corrective actions required as per the letters. He has further contended that on account of sheer negligence towards its work and also the slow pace, the Petitioner No.1 was suffering major losses and therefore the Opposite Party No.2 was responsible for the losses suffered by it. The Opposite Party No.2 with a view to conceal its own misdeeds during the business relationship sent a legal notice dated 18.07.2011 to the Petitioners demanding a sum of Rs.36,99,819.84 without any basis which it alleges to be due. The Petitioner No.1 had written several times and spoken over the phone to either return the materials given to the Opposite Party No.2 for the works allotted or account for it, in the absence of which the Petitioner No.1 would be constrained to deduct the amount of the materials from the bills of the Opposite Party No.2. He further submits that the material worth Rs.28,63,855/- had not been accounted for by the Opposite Party No.2. Hence, the Petitioner No.1 deducted Rs.28,63,855/- from the amount payable by the Petitioner No.1 and arrived at the balance amount of Rs.17,80,845/- which is payable and due by the Opposite Party No.2. The Petitioner No.1 in its reply dated 04.08.2011 claimed Rs.17,80,845/- as an amount due and payable by the Opposite Party No.2. The Petitioner No.1 subsequently sent reminder to the Opposite Party No.2 for payment of Rs,17,80,845/- on 5th October, 2011. On receipt of the reply to the legal notice dated 04.08.2011 and the reminder for payment dated 05.10.2011, the Opposite Party No.2 replied the same by letter dated 27.10.2011. The Petitioner No.2 thereafter sent reminders for payment vide letters dated 22.11.2011 and 21.12.2011, however, the Opposite Party No.2 chose not to pay the amount due and with malicious intent initiated criminal proceeding which is nothing but an abuse of the process of law.

5. He has further submitted that the Director of the complainant company in his solemn affirmation stated that he had received Rs.40-50 lakhs from the Petitioner No.1. He has further submitted that similar is the statement of the two witnesses, who were examined in course of enquiry under Section 202 Cr.P.C. The case of the complainant is that even though it completed the works as per the work orders, all payments were not released and Rs.36,99,819.84 is the balance outstanding. He has submitted that even if the entire allegations made in the complaint are taken to be true at its face value, at best, it would be a case of a civil dispute arising from the breach of contract.

6. He has submitted that neither the Petitioner No.1 nor any of its officers, at any point of time, ever had any dishonest intention nor did they make any false promises or offer any inducement to the Opposite Party No.2. He has submitted that the entire complaint is false, unfounded, concocted and vexatious based on extraneous, irrelevant and collateral considerations, manifestly attended with

malafides and proceedings maliciously instituted with ulterior motive to vent and wreak vengeance, coerce, intimidate and pressurize the Petitioners to make good the alleged loss the complainant claims to have suffered due to its own poor business standards.

7. On the other hand, Mr. Ramakant Sharma, learned Senior Counsel appearing on behalf of the Opposite Party No.2 has submitted that a sum of Rs.36,99819.84 was due on the Petitioners and inspite of several verbal/written request, the Petitioners failed to pay the said final settlement amount. He submits that the officers of the Petitioner No.1 visited the office of the Complainant-Opposite Party No.2 and induced the complainant to do civil contract work for the accused Company. They also assured the complainant that there is a very good margin and profit possibility if the complainant would start the work of making mobile tower and believing the representations/assurance given by the accused persons the complainant started the work assigned by the accused persons. He has submitted that necessary factual foundation constituting an offence under section 420 IPC has been made in the complaint and simply because of existence of civil remedy in respect of the dispute arising from the breach of contract, the proceeding should not be quashed. He has further contended that a given set of facts may make out a purely civil wrong or a purely criminal offence or a civil wrong as also a criminal offence. According to him, in the present case the

allegations made make out a civil wrong as also a criminal offence. He has submitted that the crux of constituting an offence under Section 420 IPC is the intention of the person who induces the victim and not the nature of the transaction which would become decisive in inferring whether there was an offence or not. In the present case, the complainant has stated that he was induced to believe that the accused persons would make payments after the execution of work, but the complainant realized latter that the accused after taking the works from it, failed to make full and final payment. He submits that the intention of the accused was not honest right from the beginning and hence the ingredient of the offence punishable under Section 420 IPC is clearly attracted.

8. I have heard the respective counsel for the parties and perused the materials available on record.

9. It is true that as per the complaint, the Complainant Company M/s Jai Maa Parmar Engineers Private Limited was engaged by the Petitioner No.1 (Reliance Infratel Limited) to carry out civil engineering works for it on being induced by the officers of the Company. The work orders were issued by the accused Company and work was done by the complainant Company. However, the case of the complainant is that even though it completed the works as per the work orders, all payments were not released and Rs.36,99,819.84 is the balance outstanding. The complainant in his solemn affirmation

and the two witnesses examined on his behalf stated that the complainant was paid Rs.40-50 lakhs by the Petitioner No.1 but the balance amount was not paid despite requests having been made by the complainant.

10. As noted hereinabove, cognizance has been taken by the learned Magistrate under Section 420 IPC. The offence punishable under section 420 IPC reads as under:-

> "**420. Cheating and dishonestly inducing delivery of property.-**
> Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

11. 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.

12. Section 420 IPC does not define cheating. It only provides punishment for cheating. The offence of cheating is defined under section 415 IPC, which reads as under :-

> "**415. Cheating —**
> Whoever, by deceiving any person, fraudulently or

> dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "**cheat**"."

13. The Section consists of two distinct parts, each part dealing with one way of cheating, (i) the first part contemplates where by deception practiced upon a person the accused dishonestly or fraudulently induces that person to deliver a property to any person or to consent that any person shall retain any property, (ii) the second part envisages where by deception practiced upon a person the accused intentionally induces that person to do or omit to do so, if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

14. There are catena of judgments of the Supreme Court which clearly state that for an act to attract the essential ingredients of Section 420 IPC, it is pertinent that the intent to cheat must have been in existence at the time of inducement to the complainant. The Director of the complainant Company, whose statement was recorded under Section 200 Cr.P.C. and the witnesses to the complaint whose statements were recorded under Section 202 Cr.P.C. have clearly stated that the Petitioner No.1 has paid Rs.40-50 lakhs towards the

work completed and, therefore, it cannot be said that the accused persons had any intention to cheat the complainant at the time of inducement to the complainant. In view of the said circumstances, no criminal element can be fastened on the accused persons.

15. In ***Hridaya Ranjan Prasad Verma v. State of Bihar,[(2000) 4 SCC 168],*** in paragraph 15, the Supreme Court has held as under :-

> "**15.** In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

16. In ***Hira Lal Hari Lal Bhagwati v. CBI,[(2003) 5 SCC 257],*** in paragraph 40, the Supreme Court held as under :-

> **"40.** It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate contained necessary

conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers *right at the time of making application for exemption*. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Indian Penal Code does not arise. We have read the charge-sheet as a whole. There is no allegation in the first information report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what were the roles played by the appellants in the alleged offence. The appellants, in our view, could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a non-profit organisation and, therefore, the allegations against the appellants levelled by the prosecution are unsustainable. The Kar Vivad Samadhan Scheme certificate along with *Duncan [(1996)5 SCC 591] and Sushila Rani [(2002)2 SCC 697]* judgments clearly absolve the appellants herein from all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been compounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process."

17. In ***Vir Prakash Sharma v. Anil Kumar Agarwal, [(2007)7 SCC 373]***, the Supreme Court observed that non-payment or

under-payment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust.

18. In ***Ajay Mitra v. State of M.P, [(2003) 3 SCC 11],*** the Supreme Court observed that a guilty intention is an essential ingredient of the offence of cheating. In other words "mens rea" on the part of the accused must be established before he can be convicted of an offence of cheating.

19. In ***Indian Oil Corporation** v. **NEPC India Ltd. and Others [(2006) 6 SCC 736]***, noticing the growing tendency in business circles to convert purely civil disputes into criminal cases, the Supreme Court observed as under :-

> "……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 break down 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……"

20. In ***Indian Oil Corporation*** (Supra), the Supreme Court further observed that "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 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

21. On the same line the Supreme Court in ***G. Sagar Suri v. State of U.P.,[(2000) 2 SCC 636]*** observed in paragraph 8 as under :-

> "**8.** Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. 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."

22. In ***G.V. Rao v. L.H.V. Prasad,[(2000) 3 SCC 693]***, the Supreme Court, in paragraph 7, held as under :-

> **"7.** As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest

> or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in *Jaswantrai Manilal Akhaney* v. *State of Bombay* a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "*mens rea*" on the part of that person, must be established. It was also observed in *Mahadeo Prasad* v. *State of W.B* that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."

23. In ***S.W. Palanitkar v. State of Bihar, [(2002) 1 SCC 241]***, the Supreme Court, in paragraph 21, laid down as under :-

> "21. ………. In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."

24. Coming back to the facts of the present case, on a plain reading of the complaint, it would be clear that the entire prosecution is in normal course of business and bereft of any ingredients of Section 420 IPC. Even if, for the sake of argument, it is assumed that there is an outstanding amount payable by the Petitioner No.1, it would, at best, constitute a civil dispute. In my opinion, in absence of any ingredients constituting an offence under Section 420 IPC, the present complaint is clearly an abuse of the process of the court and the complainant by launching the present criminal complaint intends

to arm-twist the Petitioners to pay an amount for which a civil remedy is available to it.

25. The principles relating to exercise of jurisdiction under section 482 of the Code to quash the complaint and criminal proceedings have been considered by the Supreme Court in several decisions. In ***State of Haryana & Others Vs. Bhajan Lal and Others [1992 Supp (1) SCC 335],*** certain parameters have been pointed out in paragraph 102 by the Supreme Court under which prosecution launched in a complaint or FIR may be quashed in exercise of jurisdiction under Section 482 of the Code. It reads as under:-

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the First Information Report or 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 a case against the accused.
>
> (2) Where the allegations in the First

Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

26. Judged on the touchstone of the principles noted above

in State of Haryana Vs. Bhajan Lal (Supra), the present case would fall within the category nos. (1), (3) and (7).

27. Having regard to the facts and circumstances of the case and taking into consideration the law laid down by the Supreme Court in the decisions discussed hereinabove, the present application deserves to be allowed. Accordingly, the application is allowed. The impugned order dated 25.01.2012 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 2658(C) of 2011 is set aside. Complaint Case No. 2658(C) of 2011 and all proceedings emanating therefrom are also quashed.

(Ashwani Kumar Singh, J)

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