IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47482 of 2012

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Sayan Bandhopadhayay, Son of Deokumar Banerji, Resident of Marwari Awas Griha, Fraser Road, P.S. Kotwali, Town & District Patna at Present Residing at Centrum Plaza, Tower C, 2nd Floor, Golf Course Road, Sec-53, Gurgaon, Haryana

.... Petitioner/s

Versus

1. State Of Bihar
2. Prasadi Kumar, Son of Late Ramkishan Mahto, Resident of Village Kenarchatti, P.S. Wazirganj, District Gaya

.... Opposite Party/s

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Appearance :

For the Petitioner : Mr. Chitranjan Sinha, Sr. Advocate

For the State : Mr. Kumar Dhirendra Pratap Singh(App)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

4 27-04-2015 This application under Section 482 of the Code of Criminal Procedure has been filed for quashing of entire criminal proceeding, arising out of Complaint Case No. 225 of 2010, including the order dated 27.09.2011 passed by the learned Judicial Magistrate, Ist Class, Gaya, whereby the learned Magistrate finding a prima facie case to be made out for the offences punishable under Section 405, 418, 427 and 447 of the Indian Penal Code has summoned the petitioner and

others to face trial.

2. It has been alleged in the complaint petition that the complainant is owner of a piece of land bearing khata nos. 212 and 210 and khesra nos. 1882, 1883 and 1899 having an area of 22 decimals in the village Kenarchatti under Wazirganj Police Station in the District of Gaya. The accused persons proposed for a lease of agreement for 15 years in respect of the said land for the purpose of installation of a Telecom Tower. After negotiation lease was executed in July, 2004, and rent was fixed as Rs. 3,000/- per month along with Rs. 9,000/- as security deposit and rent of one month in advance. In pursuance of the said agreement, the accused persons allegedly gave a cheque of Rs. 12,000/- dated 31st July, 2004 and took possession of his land on 25th July, 2004. They dug a trench on the said land. The father of opposite party no. 2 presented the cheque for encashment in his account and it was found that the said cheque was dishonoured on instruction of the accused persons for stop payment. The complainant claimed that the accused persons had rendered his land uncultivable and thus, cheated him.

3. The complainant was examined on oath and two witnesses were examined in course of enquiry under Section 202 of the Code of Criminal Procedure on behalf of the complainant. Thereafter, by the impugned order dated

27.09.2011, the learned Magistrate took cognizance of the offences punishable under Sections 405, 418, 427 and 447 of the Indian Penal Code and summoned the petitioner and others to face trial.

4. It has been submitted that during pendency of the criminal proceedings aforementioned, the parties have amicably settled the matter. In terms of the compromise the petitioner has given a demand draft of Rs. 12,000/- to the counsel for the opposite party no. 2. After having instruction from the opposite party no. 2 in this regard Mr. Kumar Dhirendra Pratap Singh, learned counsel for the opposite party no. 2 has received the demand draft no. 673801 dated 25.04.2015 issued by the State Bank of India in favour of the opposite party no. 2. A Xerox copy of the aforementioned demand draft has been filed by the learned counsel for the petitioner in course of the argument. Let the same be kept on record. Learned senior counsel for the petitioner has submitted that the dispute between the parties being personal in nature the same could be taken as settled and the proceedings be quashed. Learned counsel for the opposite party no. 2 has also supported the contention of the petitioner. He has submitted that in view of amicable settlement of dispute between the parties, it would be proper in the interest of justice to quash the proceedings.

5. In view of the nature of dispute, I would deal with the aspect of compounding of the offence, but before doing the same, I would like to deal with the other arguments advanced on behalf of the petitioner.

6. It has been submitted by the learned counsel for the petitioner that during the relevant period the petitioner was employed as the Manager with Finance Department of the Bharti Cellular Limited, which is now known as Bharti Airtel Limited, which is a Company incorporated under the Indian Companies Act, 1956, having its registered office at New Delhi. The Company in question is engaged in business of providing telecommunication services. It has been granted license by the Department of Telecommunication, Government of India, to provide GSM based telephone services in Bihar Telecom Circle, which comprises the State of Bihar and Jharkhand. It had a large number Telecom Transmission Towers till the year, 2007, but after 2007 all the infrastructural assets of the Company including Telecom Towers were transferred to a new entity namely Bharti Infratel Limited. Since then, Bharti Infratel Limited is engaged in the business of installing passive telecom infrastructure.

7. Learned counsel has further contended that as a matter of fact, the father of the complainant had offered his land for installation of telecom tower against a monthly rental.

He had represented that the land was free from all disputes. The company relying upon the statement of the father of the complainant, entered into lease agreement, for a period of 15 years. However, the company could not take possession of the land on account of dispute with the boundary raiyat. The said dispute was quite old and the complainant and his father had suppressed the same from the company. It has been submitted that since the Company was not provided with peaceful possession of the land, therefore, the payment of the cheque was stopped and the agreement was terminated. It has further been argued that from perusal of the complaint, it would reveal that the agreement was executed and the cheque was given in the year 2004, while the present false and fabricated complaint was filed in the year 2010 i.e. after six years and no reasonable explanation has been provided by the complainant for such an inordinate delay.

8. Learned counsel for the petitioner has further contended that agreement in question was entered into between the complainant and the Company. The Company has not been made an accused by the complainant in the present case. The liability, if any, of the Company, cannot be fastened upon an employee of the Company as an employee would not be vicariously liable for any fault constituting an offence under the IPC committed by the Company especially, in absence of

the Company being arraigned as an accused. In this regard he has relied upon a judgment of the Hon'ble Supreme Court in the case of R. Kalyani Vs. Janak C. Mehta reported in (2009) 1 SCC 516. He has submitted that the company does not act of its own but through its Directors/Officers and when such Directors/Officers act on behalf of the company, the company is also held liable for those acts on the application of "principal-agent" principle. He submitted that for the act of the company an individual cannot be made accused, unless this is a categorical provision in the statue making such a person vicariously liable.

9. Considering the submissions made hereinabove, I am of the considered opinion that the impugned order dated 27.09.2011 is apparently bad for the reason that the maximum punishment prescribed for the offences under which prima facie case has been found to be made out by the Magistrate is three years and, therefore, there would be a bar to taking cognizance of the offence after lapse of three years in terms of Section 468 (2) (c) of the Cr.P.C. The learned Magistrate could not have taken cognizance for the offences punishable under Sections 405, 418, 427 and 447 of the Indian Penal Code, after expiry of three years, without passing an specific order extending the period of limitation, in terms of Section 473 of the Code of Criminal Procedure.

10. I further find substance in the submission of the learned counsel for the petitioner, that the liability of the Company could not be fastened upon the Officers and employees of the Company, when the Company itself was not made an accused. In case of R. Kalyani (supra) the Hon'ble Supreme Court has held that when a person is sought to be prosecuted under the penal code on the ground that he is vicariously liable for the affairs of the Company, it is necessary that the Company is also impleaded as an accused. Allegations contained in the present case are for commission of offences under the Indian Penal Code. A vicarious liability can be fastened only by reason of a provision of the statute and not otherwise. The Penal Code, 1860 save and except in some matters does not contemplate any vicarious liability on the part of the person. The officers of the company, in absence of a legal fiction, cannot be said to have committed an offence only because they are holders of the officers. The learned Judicial Magistrate, therefore, was not correct in issuing summons without taking into consideration this aspect of the matter.

11. In view of the above circumstances, coupled with the fact that the petitioner has also made payment of the disputed amount of Rs. 12,000/- to the complainant through demand draft and the parties have amicably settled their dispute, I deem it fit and proper in the interest of justice to

quash the proceedings.

12. Accordingly, I quash the entire criminal proceeding arising out of Complaint Case No. 225 of 2010 including the order dated 27.09.2011 passed by the learned Judicial Magistrate, Ist Class, Gaya.

13. The application stands allowed.

(Ashwani Kumar Singh, J)

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