

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 21406 of 2013

Arising Out of PS.Case No. -301 Year- 2012 Thana -NAWADA District- NAWADA

=====

S.M. Mahtab Ahmad S/O Late Abdul Matin Resident of Village- Hargawan, P.S.-
Manpur, District- Nalanda, presently residing at Mohalla- Islam Nagar, Bye
Pass Road of Nawada Town, P.S.- Nawada Town, District- Nawada.

.... Petitioner

Versus

1. The State of Bihar
2. Gauri Singh, son of Late Bachhu Singh, resident of Village – Sagma, P.S.
Kasichak, District – Nawada.

.... Opposite Parties

=====

Appearance :

For the Petitioner/s	:	Mr. Arun Kumar Arun
For the Opposite Party/s	:	Mr. D.P.Tiwari, A.P.P. Mr. Devendra Pd. Singh Mrs. Uma Kumari

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 16-09-2016

Heard Sri Arun kumar Arun, learned counsel for the
petitioner, Sri Damodar Prasad Tiwari, learned Addl. Public
Prosecutor as well as Sri Devendra Prasad Singh, learned counsel for
complainant/opposite party no. 2.

2. The petitioner has approached this Court invoking its
inherent jurisdiction under Section 482 of the Code of Criminal
Procedure, 1973 (in short “Cr.P.C.”), with a prayer to quash an order
dated 17-01-2013 passed by learned Chief Judicial Magistrate, Nawada
(hereinafter referred to as ‘Magistrate’) in Nawada Town P.S. Case No.
301 of 2012/G.R. No. 1459 of 2012 (arising out of Complaint Case No.
737 of 2012). By the said order, the learned Magistrate, differing with
the police report, has passed order of cognizance and directed for

summoning the petitioner.

3. Short fact of the case is that initially the opposite party no. 2 filed a complaint, which was registered as Complaint Case No. 737 of 2012. The complaint was filed on an allegation of committing offences under Sections 406, 307, 504 of the Indian Penal Code. In the complaint petition, the petitioner was arrayed as sole accused. It was alleged in the complaint petition that the complainant had entered into an agreement with the petitioner & one another and formed a partnership firm for executing certain contract work. It was alleged that complainant had invested huge amount in the business transaction. As per agreement, profit was to be distributed in equal share in between all the three partners. However, even after receipt of more than crores, it was alleged by the complainant that complainant was not paid his share. The complaint petition was referred to the police for registering F.I.R. and investigation under Section 156(3) of the Cr.P.C. and as such, an F.I.R., vide Nawada Town P.S. Case No. 301 of 2012 , was registered on 20-06-2012. After thorough investigation, the police found the dispute as civil in nature and final report was submitted, vide Final Report No. 449 of 2012 dated 30-11-2012. In the meanwhile, a protest petition was also filed on behalf of the complainant, however; the learned Magistrate by its order dated 17-01-2013 passed order of cognizance for offences under Sections 406 and 420 of the Indian Penal Code and directed for summoning the petitioner. Aggrieved with the order of cognizance, the petitioner

approached this Court by filing the present petition.

4. On 04-03-2016, while directing for issuance of notice to complainant/opposite party no. 2, this Court had directed for staying further proceeding before the court below and thereafter, complainant appeared through Sri Devendra Prasad Singh and matter was finally admitted for hearing on 05-05-2016. While admitting, Lower Court Record was also summoned, which has been received.

5. Sri Arun Kumar Arun, learned counsel for the petitioner, by way of referring to facts disclosed in the complaint petition, at the very outset submits that fact disclosed in the complaint petition categorically depicts that it was a case of business transaction in between the petitioner and the complainant. He submits that there were many reasons for the dispute, however; on perusal of the complaint petition itself, there is nothing to suggest for commission of offence either under Section 420 or 406 of the Indian Penal Code. He further submits that order of cognizance is liable to be set aside, mainly on the ground that once the investigating agency, after thorough investigation, had submitted final report exonerating the petitioner, the learned Chief Judicial Magistrate was not required to pass order of cognizance, that too without any reason. He submits that order impugned does not indicate any reason for differing with the police report. On aforesaid ground, a prayer has been made to quash the impugned order and proceeding in the aforesaid case.

6. Sri Devendra Prasad Singh, learned counsel for the



complainant/opposite party no. 2 opposing the prayer submits that it is true that there was business transaction in between the petitioner and the complainant, but fact remains that complainant was deceived by the petitioner and huge amount from the complainant was taken by the petitioner and petitioner has committed fraud. He submits that the fact disclosed in the complaint petition discloses commission of offence for which cognizance order has been passed. He submits that even in a business transaction, there can be case of cheating. To substantiate his submission, Sri Devendra Prasad Singh has placed reliance on a judgment of the Apex Court, reported in **2000(1) P.L.J.R. (S.C.) 79 (Rajesh Bajaj -vs.- State NCT of Delhi & Ors.)**. He has specifically referred to paragraph – 10, 11 and 12 of the judgment, which are quoted hereinbelow:-

“10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheating were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code [Illustration f] is worthy of notice now:

“(f) a intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.”

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether

there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realized later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would *prima facie* make out a case for investigation by the authorities.

12. The High Court seems to have adopted a strictly hypertechnical approach and sieved the complaint through a cullendar of finest gauzes for testing the ingredients under Section 415 IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of criminal offence is involved.”

7. Sri Singh, learned counsel for the complainant/opposite party no. 2 submits that at the moment, the learned Magistrate has only passed order of cognizance and if petitioner feels that there is no case, he can file appropriate petition at appropriate stage, not at this preliminary stage. On aforesaid ground, a prayer has been made to reject the petition.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record, including the Lower Court Record. After going through the record, it is evident that the complaint petition was thoroughly investigated by the investigating



agency and thereafter, it was found that it was not a case of criminal offence, rather the investigating officer had noticed that it was a civil dispute. Accordingly, petitioner's name was not included in column no. 11 of the chargesheet. Meaning thereby that petitioner was not forwarded as accused in the case and final report was submitted. So far as point, which has been raised by the learned counsel for the complainant that even in business transaction, there can be case of criminal offence, this Court is in agreement with his submission, but in the present case, the case was investigated thoroughly by the statutory investigating agency and no sufficient material was found to forward the petitioner to face trial and his name was not incorporated in the chargesheet as accused. The learned Chief Judicial Magistrate though was competent to pass order of cognizance, differing with the police report, it was essential on his part to assign reason succinctly for differing with the police report. On perusal of the impugned order, the Court is satisfied that no reason has been assigned by the learned Magistrate and as such, on this very point, the order of cognizance is liable to be set aside.

9. It goes without saying that if an investigating agency after thorough investigation submits final report exonerating accused persons, the said report may not be treated as waste paper. Once such report is submitted, the learned Magistrate at the time of differing with the police report is required to assign succinct reason. Since in the order impugned, no reason has been assigned, the Court is satisfied

that order impugned is liable to be set aside, particularly; in view of nature of accusation, as has been levelled in the complaint petition.

10. So far as judgment referred by learned counsel for the complainant (supra) is concerned, in the present case, after the complaint was referred to the police, the F.I.R. was registered and during investigation, no accusation was found true against the petitioner and as such, petitioner was not included in column no. 11 of the chargesheet, whereas, in Rajesh Bajaj's case (supra), the investigation was interfered with by the High Court. Accordingly, in view of peculiar fact of this case, the complainant may not get any assistance from the judgment of the Hon'ble Apex Court in Rajesh Bajaj's case (supra).

11. Accordingly, the order impugned i.e. order dated 17-01-2013 passed by learned Chief Judicial Magistrate, Nawada in Nawada Town P.S. Case No. 301 of 2012/G.R. No. 1459 of 2012 (arising out of Complaint Case No. 737 of 2012) is hereby set aside.

12. The petition stands allowed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.09.2016
Transmission Date	19.09.2016