IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43166 of 2015

Arising Out of PS.Case No. -28427 Year- 2014 Thana -PATNA COMPLAINT CASE District-PATNA

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Anirudh Gautam, aged about 42 years, Area Service Manager S/o Arvind Gautam Tata Motors Co. Ltd., 109, 2nd Floor, Adharshila Complex, Gandhi Maidan, P.O. Bankipore, P.S. Gandhi Maidan, Patna

.... Petitioner

Versus

1. The State of Bihar.
2. Karnesh Kumar S/o Late Dubri Rai, R/o Chirand, P.S. Doriganj, Dist- Saran, Bihar.

.... Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Dayanand Singh, Advocate
For the opposite party no.2	:	Mr. Ram Sumiran Rai, Advocate
For the State	:	Mr. Tapeshwar Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-07-2016

This application under Section 482 of the Code of Criminal Procedure (For short 'CrPC') has been filed by the petitioner for quashing the order dated 11.03.2015 passed by the learned Judicial Magistrate-1st Class, Patna in Complaint Case No. 28427 of 2014 whereby the petitioner along with two others, namely, Mohan Kumar and Deepak Dayal has been summoned to face trial for the offence punishable under Section 420 of the Indian Penal Code (For short 'IPC').

2. In short, the case of the complainant is that he had purchased two buses from Maurya Motors Pvt. Ltd., a commercial vehicle dealer of Tata Motors Ltd. and had paid a total amount of Rs.

44,94,000/- as consideration money. The two buses bearing Registration No. BR 04N 0661 and BR 04N 0694 were financed by Cholamandalam Investment and Finance Company Ltd. The complainant-opposite party No. 2 sent those buses for regular servicing to Maurya Motors Ltd. However, certain technical and mechanical faults were detected in those buses during warranty period and when the complainant contacted the petitioner who was the Sales Manager of Tata Motors Ltd. in this regard, he asked him to take the vehicles to Maurya Motors Ltd. for photograph. As per his advice, the vehicles were taken to Maurya Motors Ltd. and after photography, when the vehicles were being taken to Siwan stand, the windshield of one of the buses shattered into many fragments when the windshield broke. An information, in this regard, was also given to the officers of Tata Motors Ltd. Subsequently, on inquiry, the complainant came to know that the aforesaid vehicles were initially sold to one M/s Eden Transport Pvt. Ltd. and when M/s Eden Transport Company found the vehicles defective, it returned the vehicles and subsequently, the old vehicles were supplied to the petitioner by the dealer Maurya Motors Ltd. in the name of new vehicles. It has been alleged in the complaint that when the complainant registered his complaint before the accused persons, they refused to redress his grievance. The complainant felt cheated by the accused person and, hence, a complaint was lodged.

3. The complainant was examined on solemn affirmation under Section 200 of the CrPC and in course of inquiry under Section 202 of the CrPC, besides the complainant, one more witness, namely, Churamani Das was examined in support of the complaint. After recording the statement of the complainant and the inquiry witness, the learned Judicial Magistrate-1st Class, vide impugned order dated 11.03.2015, found a prima facie case to be made out against the petitioner and two others under Section 420 of the IPC and summoned them to face trial. The aforesaid order dated 11.03.2015 is under challenge in the present application.

4. It is contended by the learned counsel for the petitioner that at the relevant time the petitioner was working as Area Sales Manager in Tata Motors Ltd. at Patna and was involved in overseeing the service related work of commercial vehicles which were repaired at the various authorized work shops/service centres of Tata Motors Ltd. spread across the State of Bihar as well as gave guidance and advise as to what needs to be done, as and when any vehicle reports to the workshop for carrying out any repair related jobs as well as routine services. According to him, there is no specific allegation against the petitioner in the entire complaint. The complainant had not dealt with Tata Motors Ltd. in any way. The entire dealing of the complainant was with Maurya Motors Ltd, which is a limited company. The dealer company has not been made

accused in the present case and in absence of the company, which is alleged to have sold the vehicle being made accused, the office-bearers of the company cannot be prosecuted, as the allegations contained in the FIR are commission of offence under general statute for which a vicarious liability cannot be fastened upon the office-bearers of the company. He has submitted that the two other accused, namely, Mohan Kumar and Deepak Dayal are office-bearers of the company Maurya Motors Ltd. and Tata Motors Ltd.

5. It is further contended that the essential ingredients for constituting an offence punishable under Section 420 of the IPC are completely lacking in the present case, as there is no allegation that the accused persons ever dishonestly induced the complainant to deliver any property. According to him, at best, the dispute, if any, is of civil nature and the complaint has been instituted with ulterior motive in order to extort money from the petitioner and others.

6. *Per contra,* learned counsel for the complainant has submitted that the complainant had paid Rs. 44,94,000/- to Maurya Motors Ltd. in order to purchase two new buses. However, the accused persons fraudulently delivered old buses to the complainant and the tax invoice received by the complainant at the time of servicing made it clear that the vehicles were initially sold to M/s Eden Transport Pvt. Ltd. On further inquiry, the complainant

came to know that since the vehicles were defective, M/s Eden Transport Pvt. Ltd. returned those vehicles to the Maurya Motors Ltd. and, subsequently, the accused persons managed to sell those old vehicles to the petitioner after charging full amount for two new vehicles. According to him, the alleged act would certainly come within the purview of Section 420 of the IPC. He has further submitted that since the petitioner was Area Sales Manager of Tata Motors Ltd., it was his responsibility to ensure that the authorized dealer of the company does not indulge in illegal trade practice.

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

8. I find force in the submissions advanced on behalf of the petitioner.

9. From the plain reading of the entire averments made in the complaint petition, solemn affirmation of the complainant and deposition of inquiry witness, as also the document brought on record, no offence of cheating is made out against the petitioner in the present case. There is absolutely no allegation, whatsoever, that there was dishonest intention on the part of the petitioner since the beginning of the transaction.

10. The ingredients of an offence contained in Section 420 of the IPC are as under:-

(i) deception of any person;

(ii) fraudulently or dishonestly inducing any person to deliver any property;

(iii) to consent that any person shall retain any property and;

(iv) intentionally inducing that person to do or omit to do anything which he would not do or omit.

11. In view of the allegations made in the present complaint, as discussed, it would be evident that necessary ingredients for fastening the offence under Section 420 of the IPC is clearly wanting in the present case.

12. It is settled law, by catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention right from the beginning. In the present case there is neither such allegation nor such evidence on record. There is also no allegation that the accused persons intentionally induced the complainant to purchase the vehicles.

13. Furthermore, it is an admitted case that the petitioner is not an employee of the company, which has sold the vehicles in question. He is the Area Sales Manager of the Tata Motors Ltd., which is the manufacturer company. There is absolutely no role of the petitioner in the alleged sale and purchase of the vehicles.

14. Moreover, even against the other accused persons, the ingredients of the offence alleged are not attracted.

15. It has rightly been submitted by the learned counsel for the petitioner that a vicarious liability against the office-bearers of a company can be fastened only by reason of a provision of statute and not otherwise. There is no vicarious liability in criminal law unless the statute takes that also within its fold. If a person has to be proceeded with as being vicariously liable for the acts of the company, the company must be made accused. In the present case the seller company, i.e., Maurya Motors Ltd. has not been made accused. In its absence, even the office-bearers of the seller company cannot be prosecuted.

16. The matter is essentially a civil dispute and launching a criminal prosecution for the same is clearly an abuse of the process of court.

17. In the matter of **Indian Oil Corporation** vs. **NEPC India Ltd. & Ors. [AIR 2006 SC 2780],** the Hon'ble Supreme Court clearly observed that 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 interest 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.

18. Regard being had to the allegations made in the present case, I am of the considered opinion that the impugned order taking cognizance of the offence dated 11.03.2015 is bad in the eye of law. Accordingly, the impugned order of cognizance dated 11.03.2015 passed by the learned Judicial Magistrate-1st Class, Patna in Complaint Case No. 28427 of 2014 is hereby quashed. As a consequence of the same, Complaint Case No. 28427 of 2014 and the entire proceedings arising therefrom are also quashed.

19. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.07.2016
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