

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28456 of 2013

Arising Out of Complaint Case No. -1627C Year- 2006 Thana –Shastri Nagar District- PATNA

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Rahul Kumar Singh S/o Sri Anup Singh, R/o- 201 Bansi Apartment, R.K. Bhattacharya Road, P.S.- Kotwali in the district of Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shivlal Prasad S/o Late Bhado Sao, R/o village- Punaichak, P.S. Shastri Nagar in the district of Patna.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 11684 of 2012

Arising Out Complaint Case No. -1627C Year- 2006 Thana - Shastri Nagar District- PATNA

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Binay Kumar Sinha S/o Sri N.K. Prasad, R/o G - 9 Ajit Arcade, R.K. Bhattacharya Road, Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shivlal Prasad S/o Late Bhado Sao, R/o Village - Punaichak, P.S. Shastri Nagar in the district of Patna.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 19073 of 2012

Arising Out of Complaint Case No. -1627C Year- 2006 Thana - Shastri Nagar District- PATNA

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Shiv Kumar Rathore son of Sri Rambabu Rathore, Resident of village – Gopalpur Shamshabad, PS-Shamshabad in the district of Agra.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shivlal Prasad S/o Late Bhado Sao, R/o Village - Punaichak, P.S. Shastri Nagar in the district of Patna.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.28456 of 2013)

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate

For the O.P. No.2 : M/s Ramchandra Singh and Sankar Kumar, Advs.



For the State Mr. H. Ahmad Khan, APP
(In Cr.Misc. No.11684 of 2012)
For the Petitioner/s : Mr. Sanjeev Kumar, Advocate
For the O.P. No.2 : M/s Ramchandra Singh and Sankar Kumar, Adv.
For the State Mr. H. Ahmad Khan, APP
(In Cr.Misc. No.19073 of 2012)
For the Petitioner/s : Mr. Sanjeev Kumar, Advocate
For the O.P. No.2 : M/s Ramchandra Singh and Sankar Kumar, Adv.
For the State Mr. H. Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 14-09-2017

1. The petitioners of above three criminal miscellaneous applications are Officers, Area Sales Manager and Vice President respectively of M/S Mahesh Edible Oil Company Ltd. They have filed the above applications under section 482 of the Code of Criminal Procedure Code for quashing the order dated 02.11.2006 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 1627C of 2006 whereby and whereunder the learned Magistrate finding *prima facie* case for the offences under sections 420, 406, 323 and 504/34 of the Indian Penal Code, summoned the petitioners.

2. All the above three applications have been heard and after hearing, I find that the matter in these cases, is similar and as such, they are being disposed of by this common judgment.

3. The complainant (O.P. No.2) filed the complaint case No. 1627C/2006 against the petitioners and their Company i.e. M/S Mahesh Edible Oil Industry Limited alleging *inter alia* that he



was a Distributor of the petitioners' Company since 18.07.2005, running business in the name and style of Baba Harihar Store, Punaichak, Patna. The petitioners' Company deals with edible oil in the brand name of Saloni. It is alleged that the petitioners reached at the business premises of the complainant and persuaded him to take distributorship business of their Company and as per terms and conditions, the complainant agreed to take distributorship business on the condition of selling more than 10000 liters oil. The petitioners took two blank cheques from the complainant by way of security. The petitioners subsequently stopped supplying edible oil and in spite of several request, they did not appoint the opposite party no. 2 as distributor of their Company. Thereafter, the opposite party no. 2 visited at the place of petitioners and demanded the said cheques. The petitioners did not return the cheque. They abused and assaulted the O.P. No. 2. The accuseds have thus cheated him and also committed breach of trust.

4. In course of enquiry, the complainant on solemn affirmation and other witnesses supported the allegation made in the complaint petition. The learned Magistrate finding *prima facie* case for the offences under sections 420, 406, 323 and 504/34 of the Indian Penal Code, summoned the petitioners.

5. The learned counsel for the petitioners submits



that the entire allegations, made in the complaint petition, are absurd, baseless and concocted. The complainant has filed the complaint case maliciously in order to harass the petitioners to get the outstanding dues settled. In course of business transaction, an amount of Rs.83,556/- fell due against the opposite party no. 2 as regards bill Invoice no. CCR 05001258P1 dated 15.12.2005, for which, the O.P. No. 2 issued cheque no. 709336 dated 15.12.2005 for an amount of Rs.74,135/-(Annexure-4), The said cheque was presented in the Bank for the first time on 22.12.2005, but it was dishonoured on account of insufficient fund. As per assurance of complainant, the petitioners' Company again presented a cheque in the Bank on 29th April 2006, which again bounced. The complainant further assured the petitioners to make payment in future, but in spite of repeated demand, he did not pay. The petitioners' Company after giving legal notice on 09.05.2006, filed a Complaint Case No. 207 of 2006 in the court of learned Chief Judicial Magistrate for the offence under section 138 of the Negotiable Instrument Act. In the said case, the cognizance for the offence, was taken against the opposite party no. 2 as per order dated 02.11.2006. The opposite party no. 2 in order to harass the petitioners and avoid payment of dues amount, has filed the present complaint case maliciously. The allegation of abusing and assaulting is omnibus. The petitioners had no occasion to visit at the place of the opposite



party no. 2. The learned Magistrate without applying judicial mind, has passed the order in mechanical manner and so, the impugned order is fit to be quashed.

6. On the other hand, the learned counsel for the opposite party no. 2 as well as learned Additional Public Prosecutor vehemently opposed the submission.

7. On perusal of these miscellaneous applications and the annexures enclosed therewith, I find that these petitioners are Staff are and Officers of M/S Mahesh Edible Oil Industry Limited. The complainant (O.P. No. 2) was dealing with the business of edible oil supplied by the petitioners from time to time. It is said that in course of business transaction, the opposite party no. 2 issued a cheque for an amount of Rs.74,135/- on 15.12.2015 in favour of M/S Mahesh Edible Oil Industry Limited. The petitioners' Company deposited the said cheque in the Bank on two occasions under the instruction of the opposite party no. 2, but on both the occasions, it bounced on account of insufficient fund. The petitioners after giving legal notice on 9.5.2006 filed the Complaint Case no. 2007C of 2006. From the above documents, it is evident that after giving notice by the petitioners, the complainant (O.P. No. 2) has filed the present complaint case.

8. In the case of Eicher Tractor Ltd. & Others Vs. Harihar Singh reported in (2008) 16 S.C.C. 763, I find that in the said



case the appellant after issuing a legal notice, filed complaint case against the respondent. The lower court finding prima facie case for the offence U/s 138/142, 141 of N.I. Act, ordered for issuance of summons against the respondent. Subsequent to the said case, respondent filed complaint case no. 1343 of 2004 alleging therein that the appellant had stolen the cheques and after making forgery and interpolation, presented the same in Bank and thus committed an offence punishable under Sections 468 and 471 of the Indian Penal Code. The Magistrate took cognizance on 08.02.2005. The cognizance order was challenged before Hon'ble Allahabad High Court under Section 482 of Cr.P.C. which after hearing was dismissed. The matter went to Apex Court where it was allowed and proceeding against the appellant was quashed holding that the said case squarely covered within the parameters indicated in category (7) of Bhajan Lal case (1999 Supp (1) S.C.C. 335).

9. The fact of the present complaint case appears to be similar to the case as discussed above. The present complaint case has been filed by the opposite party no. 2 after bouncing of cheque and giving notice by the petitioners. This shows that the opposite party no. 2 maliciously suppressing the facts, has filed the present complaint case. As such, the criminal prosecution of these petitioners appears to be an abuse of process of Court.



10. The principles relating to exercise of jurisdiction under section 482 of the Cr.P.C. to quash the complaint and criminal prosecution have been considered by the Apex Court in several decision. In State of Haryana and 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 Cr.P.C.. 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 extraordinary 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 FIR 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 FIR 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."

11. The case of the petitioners is squarely covered by the decision and guidelines given by the Hon'ble Supreme Court in above referred cases.

12. Having regard to the facts and circumstances of the case and taking into consideration the law laid down by the Supreme Court in the decision quoted above, the order dated 02.11.2006 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 1627C of 2006 and criminal prosecution of these petitioners on the basis of said order, is hereby quashed.

13. Accordingly, these criminal miscellaneous applications are allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	24.09.2017
Transmission Date	24.09.2017

