

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49688 of 2013

Arising Out of PS.Case No. -3050 Year- 2008 Thana -PATNA COMPLAINT CASE District-
PATNA

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Md. Adil @ Adil Ahmad, S/O Khurshid Alam, Resident of Kachary, Mohalla-
Phulwarisharif, P.S- Phulwarisharif, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Jainandan Shah, S/O Late Gajadhar Sah, Resident of Damodar Dumri, PO-
Padmaul, P.S- Khudni, District- Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Syed Mohammad Shabbir Alam, Adv.
For the Opposite Party/s	:	Mr. Bambam Roy, Advocate
For the State	:	Mr. APP

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

C.A.V. JUDGMENT

Date: 25-05-2017

Heard learned counsel for the petitioner, learned APP
for the State and learned counsel appearing for opposite party no. 2.

2. The present application has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Cr.P.C.) for quashing of the order dated 17.03.2009, passed by Sri Amit Raj, learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 3050/2008 whereby and whereunder cognizance has been taken against the petitioner for the offences punishable under Sections 323, 341, 406, 120-B of the Indian Penal Code and summons have been issued to the petitioner and other accused persons.

3. The genesis of the complaint case filed by the



complainant Jainandan Shah is that he was a wholesale merchant of tobacco having his shop at Bihta Kothi, Railway Line Road, Jakkanpur, Patna. He used to supply tobacco to the retailers, petitioner being one of them. The other two co-accused Shyam Lal and Ramji Prasad were also retailers. The complainant alleged that in lieu of supply of tobacco a sum of Rs. 40,000/- was due against the petitioner and from Shyam Lal and Ramji Prasad Rs. 90,244/- and 18,480 respectively, was due. It is further alleged that on 09.11.2008 at about 11.00 A.M., petitioner along with two co-accused called the complainant through witness Sanjay Kumar to take the money due. When the complainant went there, the petitioner and two co-accused refused to re-pay the due amount, assaulted him and forcibly took Rs. 980/- from his pocket. A complaint was, thus, lodged on 10.11.2008 before the learned Chief Judicial Magistrate, Patna, who made over the case under Section 192 of the Cr.P.C. to the Court of Sri Amit Raj, learned Judicial Magistrate, 1st Class, Patna, who pursuant to recording of statement of the complainant on oath and examination of witnesses under Section 202 Cr.P.C. ordered for issuance of process under Section 204 Cr.P.C. while taking cognizance against the petitioner, which order is under challenge before this Court.

4. Learned counsel for the petitioner contends that the present complaint has been instituted making false allegation, no chit of paper or agreement is between the complainant and the petitioner



of any amount due and the assault on the complainant is not corroborated by any injury report. He submits that the present case has been lodged as an afterthought as earlier the complainant had filed a complaint case against another accused, namely, Shyam Lal before the High Court bearing No. 240 of 2006 which was withdrawn on 26.03.2008 with liberty to the complainant to take recourse to common law remedy for recovery of his dues. He further submits that the matter is a purely civil dispute for which criminal colour has been added. It is further submitted that Section 406 of the Indian Penal Code is not applicable as there was no criminal breach of trust and no property was entrusted with the petitioner by the complainant and that Section 323 of the Indian Penal Code is also not applicable as no injury report with regard to the assault has been filed by the complainant. For the aforesaid proposition the petitioner cites the case of **Rashmi Jain Vs. State of Uttar Pradesh** since reported in (2014) 13 SCC 553 and the case of **Badri Prasad Bijpuria Vs. State of Bihar** since reported in 2015(3) PLJR 844.

5. Learned counsel appearing for opposite party no. 2, on the other hand, vehemently opposes the submission made by the counsel for the petitioner submitting therein that the petitioner as a retailer had taken certain amount of tobacco from the complainant and dues of Rs. 40,000/- is lying with him since long time for taking supply of tobacco and non-payment, hence, ingredients of a



cognizable offence is made out, hence, opposes the prayer made by the petitioner.

6. Learned APP for the State also submits that from the materials available on record, the ingredients of a cognizable offence is made out, hence, the order of cognizance does not deserve to be quashed.

7. Having heard the rival submissions made on behalf of the parties, I would like to first consider whether the averments made in the complaint even assuming to be true can allow the prosecution to continue as against the petitioners or would amount to gross abuse of the process of the Court. The ambit and scope of the inherent power under Section 482 of the Cr.P.C. for quashing the criminal proceedings has been discussed in paragraph 102 of the judgment rendered in the case of **State of Haryana and others Vs. Bhajan Lal and others** since reported in **1992 Supp (1) Supreme Court Cases 335**, wherein sub-paragraph (7) specifically deals with a case where a criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance and with a view to spite him due to private and personal grudge, which is quoted hereunder:

“(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.”

Further in the case of **Chandran Ratnaswami Vs. K.C. Palanisamy and others** along with analogous cases since reported in **(2013) 6 Supreme Court Cases 740**, Hon’ble Apex Court has held that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. While referring to the case of **State of Haryana and others Vs. Bhajan Lal and others (supra)**, Hon’ble Apex Court has also referred to the case of **State of Karnataka Vs. L. Muniswamy** since reported in **(1977) 2 SCC 699**, paragraph 7 of which is quoted as hereunder:

“7. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution



rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

In the case of **Indian Oil Corporation Vs. NEPC India Ltd.**, since reported in (2006) 6 SCC 736, Hon"ble Apex Court has again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/ creditors. In fact in paragraph 13 of judgment it has been held as follows:

“13. ... 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.”



Further in the case of **Inder Mohan Goswami Vs. State of Uttaranchal** since reported in **(2007) 12 SCC 1**, the Hon"ble Apex Court after considering the series of decisions at paragraph 46 observed thus:

“46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.”

8. The matter had been referred to the Mediation Cell by this Court on earlier occasion for settlement of dispute between the parties, but the Mediator could not resolve the dispute as there was no consensus between the parties of the amount taken and the amount due.

9. From the averments made on behalf of the parties, it



is apparent that the matter relates to money claim between a wholesaler being the complainant and the retailer being the petitioner. Earlier case brought about against one of the co-accused Shyam Lal by the complainant before this Court suffered withdrawal to take recourse of common law remedy. Thus, criminal cases having overwhelmingly and predominantly civil flavour stand on a different footing for the purpose of quashing, particularly offence arising out of civil dispute, which is basically private or personal in nature and in the interest of justice to continue with the criminal proceeding would tantamount to abuse of process of law.

10. For the reasons indicated above, matter being civil dispute of private nature, allowing the prosecution to continue as against the petitioner would amount to abuse of the process of court.

11. In the result, the application is allowed. Order dated 17.03.2009, passed by Sri Amit Rai, learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 3050/2008 as well the entire criminal proceedings in the aforesaid complaint case is hereby quashed.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	22.05.2017
Uploading Date	25.05.2017
Transmission Date	NA

