IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20606 of 2013

Arising Out of PS.Case No. -1993 Year- 2012 Thana -PATNA COMPLAINT CASE District- PATNA

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Ranjeet More S/O Sri Rohi Das More Managing Director, M/S Universal Construction Machinery & Equipments Ltd. Having It's Registered Office At Universal House, Warje Jakat Naka, Kothrud, P.S., District Pune (Maharastra).

.... Petitioner

Versus

1. The State Of Bihar.
2. Sunil Lalbhai @ Sunil Kumar S/O Late Hari Lal Pandit Managing Director, M/S Lal Bhai Construction Equipments Pvt. Ltd., Registered Office At G-1, Sharma Complex, Behind Hotel Vikram, Exibition Road, P.S. Gandhi Maidan, District Patna.

.... Opposite Party

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate
		Mr. Bishwajeet Singh, Advocate
		Mr. Kamlesh Kishore, Advocate
For the Opposite Party No. 2	:	Mr. Surendra Kumar Mishra, Advocate
For the State	:	Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 22-06-2017

The present application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 06.09.2012 passed by Sri Ghanshyam Singh, learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1993 (c) of 2012 whereby finding prima facie case to be made out against the petitioner for the offences punishable under Sections 379, 420, 406/34 of the Indian Penal Code, the learned Magistrate had summoned the petitioner for trial.

2. Heard Mr. Rajendra Narayan, learned Senior Counsel,

Mr. Surendra Kumar Mishra, learned counsel for the Opposite Party No. 2 and Mr. Humayu Ahmad Khan, APP for the State.

3. The facts in brief is that the Opposite Party No. 2 (complainant) filed a complaint case being Complaint Case No. 1993 (c) of 2012 against this petitioner and two others alleging that he is the M.D. of Lal Bhai Construction Equipments Pvt. Ltd., which acquired dealership from the company of the petitioner in the year 2008. The complainant as per the direction of the petitioner handed over a sum of Rs. 14,00,000/- to accused Nos. 2 and 3 on 03.05.2010 to be paid to one R.K.Sharma as a earnest money against award of certain work order in Irrigation Department. It is said that this petitioner (accused No. 1) assured the complainant to return the said amount within a week. Later, it appeared that R.K.Sharma cheated the accused persons for which accused No. 3 lodged F.I.R. being Gandhi Maidan P.S. Case No. 215 of 2010. The said R.K.Sharma was arrested and he started returning money in installments, but the complainant till the date has not received back his amount which was taken by the accused persons. It has further been alleged that on 30.06.2012, accused no. 3 along with three unknown came at his office and told him to forget the said amount of Rs. 14 lacs. The accused No. 3 assaulted and also took out his purse containing Rs. 10200/- while the other

three unknown caught hold of him. The accused persons further threatened the complainant of dire consequences. In course of enquiry, the complainant and his witnesses supported the allegation made in the complaint petition. The court below after assessing the materials on record found prima facie case as stated above and ordered for issuance of summons.

4. The learned counsel for the petitioner submits that the complainant has not come with clean hand. He has deliberately concealed the fact in order to usurp the outstanding dues of Rs. 83,30,639/-. The learned counsel further submits that in fact there were certain pending issues concerning the transaction between the complainant and the firm of the petitioner. Both the parties held joint meeting at Pune on 05.01.2012 to resolve the same. Pursuant to the said meeting, they jointly reconciled all the previous transactions, claims and counter claims and finally confirmed the correctness of balance due to the company of this petitioner. The complainant was to pay the company balance of Rs. 79,45,204/- against which the complainant had issued three cheques and the complainant was given further time till 31.01.2012 for submission of any more issue left out. The complainant further issued four more cheques on 05.01.2012 against certain travelling expenses, TDS on commission and supply of certain machinery. The said

cheques were presented in bank, which were dishonoured. The petitioner's company filed cases under Negotiable Instrument Act before the competent court at Pune wherein cognizance of offence was taken. In one case being Criminal Case No. 15282 of 2012, the court issued non-bailable warrant against the complainant on 16.04.2013. After getting knowledge of said case, the complainant filed the present complaint case on 13.07.2012 to counter the said cases only to put pressure to make settlement by illegal means. Learned counsel cited a ruling reported in (2008) 16 Supreme Court Cases page 763 and submitted that the present case squarely falls under category (7) of Bhajan Lal Case 1992 Supp (1) SCC 335, wherein similar nature of criminal proceeding was quashed. It was also submitted that there is no allegation of theft against the petitioner so as to attract the provisions of Section 379 of the Indian Penal Code. The petitioner was not even alleged to be present on the place of occurrence. The prosecution of petitioner is abuse of process of Court and so, the order taking cognizance is fit to be quashed.

5. Learned counsel for the complainant as well as the learned APP for the State opposed the submission by submitting that besides the civil remedy, the court is competent to proceed with the criminal case as the petitioner and his associates have

committed breach of trust by usurping the money taken from the complainant.

6. On perusal of annexures and documents available on record, I find that both the parties deal in business of sale and purchase. The complainant admittedly is a dealer of the petitioner's company. It appears that they had settled their outstanding dues in a meeting held on 5th January, 2012 at Pune. A memorandum of outstanding was also prepared and signed by both the parties. In the said memorandum of outstanding, an amount of Rs. 83,30,639/- was found due against the complainant. From Annexure 2/A, which is legal notice dated 31.01.2012 sent on behalf of the complainant to the petitioner, it appears that the petitioner was noticed to reconsider the unapproved claim of the complainant to the tune of Rs. 67,48,824/- and others, otherwise the complainant was at liberty to file case before the competent court for appointment of arbitrator for settlement of claim. It further appears that this petitioner's company filed case against the complainant being S.C.C. No. 15282 of 2012 in the court of Judicial Magistrate, 1st Class, at Pune in which non-bailable of arrest has been issued on 16.04.2013. The said case was filed much earlier to the present case of complainant.

7. 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).

8. The present complaint case of Opposite Party No. 2 was filed subsequent to the complaint case of the petitioner. The fact of this case is similar to the case decided by Hon'ble Apex Court. The factual scenario indicates that the present complaint case has been filed maliciously with an ulterior motive with a view to counter the proceeding initiated by the petitioner at Pune against

the Opposite Party No. 2.

9. In view of the discussion made above, I find that the criminal prosecution of the petitioner would amount to abuse of process of the Court. Accordingly, the order dated 06.09.2012 passed by learned Judicial Magistrate, 1st Class, Patna, is quashed and this Criminal Miscellaneous Application is allowed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	AFR
CAV DATE	NA
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