

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9974 of 2014

Arising Out of PS.Case No. -624 Year- 2011 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

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1. E.C.I. Engineering & Construction Company Limited, Plot No. A-12 & 13, Panchwati Township, Village Manikonda, District R.R., Hyderabad-500089 (A.P.) Through Its Chairman Sri K.Venkata Rao S/O Late Uma Maheshwara Rao.
2. Sri K. Venkata Rao S/O Late Uma Maheswera Rao Chairman, E.C.I. Engineering & Construction Company Limited, Plot No. A-12 & 13, Panchwati Township, Village Manikonda, District R.R., Hyderabad-500089 (A.P.).
3. Sri Vijay Kaja @ K. Vijay S/O Sri K. Venkata Rao Managing Director, E.C.I. Engineering & Construction Company Limited, Plot No. A-12 & 13, Panchwati Township, Village Manikonda, District R.R., Hyderabad-500089 (A.P.).
4. Sri Ajay Kaja @ K.Ajay S/O Sri K. Venkata Rao Finance Director, E.C.I. Engineering & Construction Company Limited, Plot No. A-12 & 13, Panchwati Township, Village Manikonda, District R.R., Hyderabad-500089 (A.P.).
5. Sri K. Venkata Phani S/O Sri K. Venkata Rao Whole Time Director, E.C.I. Engineering & Construction Company Limited, Plot No. A-12 & 13, Panchwati Township, Village Manikonda, District R.R., Hyderabad-500089 (A.P.).

.... Petitioners

Versus

1. The State Of Bihar.
2. Dayanidhi Singh S/O Late Satya Deo Singh Resident Of Mohalla Saket Nagar, P.S. Sasaram, District Rohtas (Bihar).

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Raju Giri, Advocate
Mr. Santosh Kumar Mishra, Advocate
For Opposite Party No.2 : Mr. Rajeev Kumar Singh, Advocate
Mr. Chandra Mohan Jha, Advocate
For the State : Mr. A.M. Pd. Mehta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 25-08-2017

This application is filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973 seeking setting aside of order dated 29.1.2014 passed by Judicial Magistrate, 1st Class,



Sasaram, Rohtas (Bihar) in Complaint Case No.624 of 2011 whereby taking cognizance of the offence under Sections 403, 418/34 of the Indian Penal Code and all subsequent criminal proceeding in the matter.

2. The allegation as narrated in brief in the complaint case is that the complainant was appointed as a Sub Contractor by E.C.I. Engineering & Construction Company Ltd., one of the accused for completing 33% work of repairing Ara-Sasaram road. The crux of the allegation is that the petitioners entered into an operational agreement for doing the work but there was no such terms in the agreement for giving security to the accused persons but they forced the complainant to issue eight cheques as a security and obtained eight cheques from the complainant on 11.5.2008 with a promise it would not be presented before the Bank but the cheques were presented for realizing payment of one crore in order to falsely implicate the complainant in a criminal case. The complainant submitted the cheques with a forwarding letter mentioning these conditions and now they are misusing the cheques given by the complainant and threatening to implicate in a false case.

3. Learned counsel for the petitioners submits that even taking the allegation in entirety as levelled in the complaint no



criminal offence is made out against the accused persons. He refers to the operational agreement entered in between the Company and the complainant (Annexure-5) and further refers to clause 1 and 2 of the agreement, according to Clause (2) the Sub-Contractor, the complainant, agreed to deposit undated cheques of Canara Bank for an amount of Rs.8,21,88,528/- against the advance already availed by the complainant from the Company for execution of the work as mobilization advance. The document is signed by both parties whereas the Annexure-A submitted by the complainant showing that cheques would not be used by Company is not a part of the agreement. Learned counsel for the petitioners further submits that the cheques were given as a security, when complainant failed to discharge the liability by not paying due amount to the Company so the cheque was presented before the Bank but cheques were returned unpaid by the Banker with endorsement, 'Account blocked' and against some cheques with endorsement 'funds insufficient' subsequently a criminal prosecution was lodged by filing a case bearing Cr. No.1086 of 2013 under Sections 406 and 420 of I.P.C. in the court of Hyderabad so after filing of said case, present case was filed. It is also submitted that both sides have entered into settlement agreement on 24.2.2014 and have agreed to withdraw all cases filed



against each other including the present case. The settlement agreement is Annexure-8 and signed by the complainant.

4. Contrary to that the learned counsel appearing on behalf of the complainant asserts that the cheques were given by the complainant to the accused Company with a condition that same will not be presented in the Bank but they misused it and got that cheques dishonoured and lodged a criminal case against the complainant.

5. Having considered rival submissions and on perusal of record, this Court finds that the present complaint is filed after lodging of a criminal case by the Company against the complainant of present case as the cheques issued by him in favour of the company got dishonoured. It is apparent that cheques were issued by the complainant a Sub Contractor against the mobilization amount advanced to the complainant by the company, i.e., E.C.I. Engineering and Construction Company Ltd. for execution of work as per operational agreement between the petitioner no.1 and opposite party no.2 (complainant), whereas letter dated 11.5.2008 (Annexure-A) is not part of the aforesaid agreement, so taking into account entire allegation in totality levelled in the complaint prima facie no case of misappropriation of property or of cheating under Section 418 of the I.P.C. is made out against accused person, so the continuation of the



criminal proceeding in the present case would be abuse of the process of the Court hence the entire criminal proceeding inclusive of the cognizance order dated 29.1.2014 passed in Complaint Case No.624 of 2011 pending in the court of Judicial Magistrate, 1st Class, Sasaram is hereby quashed.

6. This application stands allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06-09-2017
Transmission Date	06-09-2017

