IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42641 of 2013

Arising Out of PS.Case No. -1575 Year- 2013 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Kishore Saraf @ Kishore Kumar Saraf, S/o Late Govind Saraf, R/o Rambag Chowk,Patna City, P.S- Chowk, Distt- Patna.
2. Sharad Khetan @ Sharad Kumar Khetan, S/o Sri Narayan Khetan, R/o Chhajubagh, P.S- Gandhi Maidan, Distt- Patna.

.... Petitioners

Versus

1. The State of Bihar
2. Smt. Urmila Devi Sah, M/s Shakti Electricals, ABC Compex, Exhibition Road, P.S- Gandhi Maidan, Distt- Patna.

.... Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Prakash Chandra Agrawal, Advocate
For the Opposite Party no.2	:	Mr. Ajay Kumar Thakur, Advocate
		Mr. Rajeev Sah, Advocate
For the State	:	Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-05-2017

Heard learned counsel for the petitioners and learned counsel for the State.

2. By way of the present application preferred under Section 482 of the Code of Criminal Procedure, the petitioners seek quashing of the order dated 18.07.2013 passed by the learned

Judicial Magistrate-1st Class, Patna in Complaint Case No.1575(c) of 2013 whereby they have been summoned to face trial for offences punishable under Sections 406, 120-B and 384 of the Indian Penal Code.

3. It is submitted by the learned counsel for the petitioners that the instant complaint has been filed by the complainant on 07.05.2013 in retaliation to the complaint filed by the petitioners vide Complaint Case No. 1575(c) of 2013 against the complainant and her husband. He submitted that none of the ingredients of the offences alleged are attracted in the present case.

4. In reply, learned counsel for the complainant-opposite party no.2 submitted that the complainant was not aware of the fact that prior to the institution of the complaint in question any complaint was ever filed against the complainant or her husband. He submitted that in the complaint filed by the petitioners against the complainant, the process was issued on 03.10.2013 whereas the complaint against the petitioners was filed as back as on 07.05.2013. He submitted that the allegations made in the complaint are quite serious and the learned Magistrate has committed no error in summoning the petitioners for the offences alleged.

5. I have heard learned counsel for the parties and perused the record.

6. The complaint in question has been filed by the complainant through her power of attorney holder Nikhil Sah. It is alleged in the complaint that both the petitioners are close relatives and were familiar to the husband of the complainant. In November, 2005, they came to the complainant's business premises in order to establish business relations with the complainant. They introduced themselves as a Carrying and Forwarding agent of Sansui India Ltd. and they offered that M/s Sansui India Ltd. is in search for distributor of their products. Being persuaded by the petitioners, the complainant agreed to be the distributor of M/s Sansui India Ltd. Thereafter, the petitioners asked the complainant to fulfil the formalities. The petitioners demanded for security deposit upon which, the complainant issued 10 cheques drawn on the State Bank of India, Exhibition Road Branch for an amount of Rs.1 lakh each totaling to an amount of Rs. 10 lakhs only as security deposit. It is alleged that after issuance of the cheques, the complainant asked the accused persons to get the agreement for distributorship fulfilled at the earliest and furnished all the details, which were required for the agreement. In reply, the petitioners assured the complainant that they will forward all necessary details to the company. It is alleged that after receiving the aforesaid cheques, neither any agreement was entered into nor the distributorship was offered nor the cheques

were returned to the complainant. It is further alleged that in February, 2013, the petitioners came to the complainant's shop and requested her husband to give them a friendly loan of Rs. 5,00, 000/- (rupees five lakh). They stated that they are in urgent need of money, but the husband of the complainant showed them inability to help due to adverse market condition and further requested them to return the cheques, upon which, the petitioners again assured that cheques would be returned soon. It is alleged that subsequently the petitioners started putting pressure upon the complainant in order to extort monetary help. When the complainant refused to extend any monetary help, the petitioner Kishore Saraf @ Kishore Kumar Saraf threatened him to face dire consequences and said that if the complainant and her husband will not give them money within a month, they would misuse the cheques issued against the security.

7. It would be evident from the record that Mr. Nikhil Sah, the power of attorney holder, was examined on solemn affirmation and apart from him, two other witnesses were also examined in course of inquiry under Section 202 of the Code of Criminal Procedure pursuant to which the impugned order dated 18.07.2013 was passed by the learned Magistrate.

8. It would be evident from the record that prior to filing of the present complaint, the petitioner No.1 had instituted a

complaint case vide Complaint Case No.466(c) of 2013 against the complainant and her husband on 24.04.2013 alleging therein, inter alia, that in the month of December, 2012, the husband of the complainant namely, Pawan Kumar Sah visited at the shop of petitioner no.1 Kishore Saraf and said that he has got a huge order to supply blankets in a government department and he has to made the supply order soon and the payment of the said supply will be made to him after supply of blankets. He requested the petitioner Kishore Saraf to give him one thousand blankets on credit on the plea of financial crunch in the business and also assured that he would pay the money positively within one month. Thereafter, the complainant delivered him one thousand blankets of Rs.600/- each amounting to Rs. 6,00,000/- on 15.12.2013 for which he gave six cheques of Rs. 1,00,000/- each which was signed by the complainant Urmila Devi with an instruction to deposit the cheque one by one, i.e., 15.01.2013. On 14.01.2013, when the petitioner no.1 asked the husband of the complainant that he is going to deposit one out of the six cheques given to him, he requested the complainant to wait for few more days, as there is no sufficient balance in the bank account. The complainant and her husband always told the petitioner no.1 to wait for few days on the ground of there being no sufficient balance in the bank account. However, on

25.02.2013, as per the instruction of the husband of the complainant one out of the six cheques was deposited in the bank account of the petitioner no.1 for encashment but the same was returned by the bank with a return memo dated 07.03.2013. Thereafter, the petitioner no.1 sent a legal notice and after receipt of the notice, the accused persons came forward and requested not to file any case.

9. Here, it would be relevant to note that the complainant-opposite party no.2 does not dispute the fact to have issued six cheques in favour of the petitioner. However, the contention of the complainant-opposite party no.2 is that the same were not issued against any liability or debt rather they were issued as security in favour of the petitioner no.1.

10. In this regard, I would like to refer to Sections 118 and 139 of the Negotiable Instruments Act, which raise presumption in favour of the holder of the cheque that the same has been issued for the discharge of any debt or liability. They read as under:-

> "**118. Presumptions as to negotiable instruments**. - Until the contrary is proved, the following presumptions shall be made:—
> (a) of consideration - that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was

accepted, indorsed, negotiated or transferred for consideration;

(b) as to date - that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance - that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer - that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements - that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps - that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course - that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved,

> that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

11. It is true that the presumption under the afore-stated section is rebuttable in nature. However, the rebuttal of presumption can take place only during trial.

12. Coming back to the complaint in question, I find that the same has been instituted after thirteen days of the institution of the complaint filed by petitioner no.1 against the complainant of the present case. Evidently, it has been filed in retaliation to the case launched against the complainant earlier. The plea of the petitioner that the cheques were issued to the petitioner by way of security is a defence of the complainant in order to save herself and her husband from being prosecuted in the case instituted by the petitioner no.1.

13. In that view of the matter, I am of the opinion that the instant complaint is an abuse of the process of the court.

14. The scope and exercise of power under Section 482 of the Code of Criminal Procedure and the categories of cases where the High Court exercise its power under it relating to cognizable offences to prevent abuse of the process of court or otherwise to secure the ends of justice were set out by the Supreme

Court in **State of Haryana and others** vs. **Bhajan Lal and others** **[1992 Supp. (1) SCC 335]** 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 extra-ordinary 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 F.I.R. 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 F.I.R. 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."

(emphasis mine)

15. In **Madhavrao Jiwaji Rao Scindia & Ors.** vs. **Sambhajirao Chandrojirao Angre & Ors. [1988 SCC 692]**, the Supreme Court held: *"that the process of court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage"*.

16. In the foregoing facts, since I have already held that the instant complaint has been instituted as a counterblast to Complaint Case No.466(c) of 2013 instituted by the petitioner no.1 against the complainant, the ratio laid down by the Supreme Court in the aforementioned judgment would be fully applicable in the present case.

17. Accordingly, in order to prevent the abuse of the process of Court and otherwise secure the ends of justice, the entire complaint case including the summoning order dated 18.07.2013 passed by the learned Judicial Magistrate-1st Class, Patna in Complaint Case No.1575(c) of 2013, is hereby quashed.

18. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.05.2017
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