IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.106 of 2016

Arising Out of PS.Case No. -57 Year- 2015 Thana –MURLIGANJ District- MADHEPURA

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1. Jayachandran T., Son of Shri P. Thiruvengadam, residing at Flat No. 1607 A, House Fed Society, Sector 79, Mohali, P.S. and District- Mohali, Punjab Pin Code No. 160055

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar, Patna
2. The Superintendent of Police, Madhepura
3. Alok Kumar Saraf, Son of Nandlal Saraf, resident of village & P.S.- Murliganj, District- Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Rajesh Ranjan, Advocate
Mr. Pankaj Kumar, Advocate

For the Respondent/s : Mr. R.N. Prasad, SC-9

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT
Date: 29-05-2017

Heard learned counsel for the petitioner as well as the learned counsel for the State-respondents. No one appears on behalf of respondent No.3.

2. By this application, under Article 226 of the Constitution of India, the petitioner has sought for quashing of the F.I.R. of Murliganj Police Station Case No.57 of 2015, pending in the Court of Chief Judicial Magistrate, Madhepura, inter alia on the ground that the F.I.R. discloses no offence; rather the matter is purely of civil dispute, therefore, criminal prosecution of the

petitioner would be an abuse of the process of the court.

3. The respondent No.3 had filed Murliganj Police Station Case No.57 of 2015, under Sections 406/419/420 of the Indian Penal Code, against the petitioner and others stating therein that respondent No.3 is owner of the petrol pump named M/s. Motilal Ramswarup at Murliganj. Co-accused S.N. Singh, Managing Director of HACS Security Services and Infra-Tel Private Limited, introduced to the informant that he is vendor of M/s. American Town Company and his main business is to provide diesel in the generator sets installed at mobile towers. On his persuasion the informant agreed to supply diesel from his petrol pump and S.N. Singh assured him for payment of the cost of diesel through petro-card. During business transaction some of the payments of supplied diesel were received by the informant. However, after four days, the petro-card was disabled and payment stopped. Thereafter, the informant repeatedly requested the said S.N. Singh and American Tower Company, but they evaded the payment. Even no reply/satisfactory reply was received in pursuance of legal notice sent to the accused persons.

4. Submission of the petitioner is that a bare perusal of the F.I.R. would reveal that there was no negotiation or agreement directly in between the informant and American Tower Company or its officials. Therefore, the allegation of dishonest and fraudulent

intention of the party making the promise is not attracted against the petitioner, who is an office bearer of American Tower Company. Moreover, the company is not an accused in this case. Hence, the employee of the company cannot be fastened upon with the criminal liability vicariously as held by the Hon'ble Apex Court in **R. Kalyani V. Janak C. Mehta**, reported in **2009 (1) SCC 516**.

5. Contention is that the main business of American Tower Company is to enable to operate and leased out the Telecom Infrastructure to the companies engaged in providing mobile telephone services. For the purpose, the company has to install mobile towers all over the country including the different places into the State of Bihar based on requirement of the customer and also on the basis of network planning. The Company generally hires the services of different contractors for maintenance of the said towers and also for supply of diesel for the generator sets installed at towers. The American Tower Company entered into an agreement on 02.12.2013 with M/s. HACS Security Services for operation and maintenance services including the supply of diesel for the generator sets vide Annexure-2. A bare perusal of the F.I.R. would show that the said HACS Company had contacted the informant. The said company had entered into an agreement for supply of diesel by the informant and payment to the informant through petro-card. Thus, the apparent liability of payment was of

HACS Company and that too was a civil liability as each and every non-payment of cost of anything does not come within mischief of cheating.

6. Submission of the State-respondent is that the supervisory authority of the aforesaid case has found the allegation true against the petitioner also. Hence, the F.I.R. should not be interfered with. Moreover, during investigation more evidences are likely to come out.

7. On careful perusal of the F.I.R. it is evident that there is no allegation against this petitioner of dishonest or fraudulent promise to the informant at any point of time. The entire alleged occurrence took place due to agreement between the HACS Security Services and Infra-Tel Private Limited and the informant. Therefore, ingredients of the offences of cheating or criminal misappropriation or breach of trust is not made out against the petitioner on bare analysis of the requirement of those offences as held in the case of **Hriday Ranjan Prasad V. State of Bihar**, reported in **2000(4) SCC 168.** Secondly the American Tower Company is not accused in this case. Hence, the petitioner, who is an employ of the said company, cannot be fastened with vicarious liability in view of the judgment of the Apex Court in **R. Kalyani V. Janak C. Mehta,** reported in **2009(1) SCC 516,** paragraphs-29 and 30 are being reproduced below:

"29. The allegations contained in the first information report, therefore, do not disclose an offence against Respondents 1 and 2. They have in their individual capacity been charged for commission of offences of cheating, criminal breach of trust and forgery. As there had never been any interaction between the appellant and them, the question of any representation which is one of the main ingredients for constituting an offence of cheating, as contained in Section 415 of the Penal Code, did not and could not arise.

30. Similarly, it has not been alleged that they were entrusted with or otherwise had dominion over the property of the appellant or they have committed any criminal breach of trust."

8. Therefore, in my view, the F.I.R. against the petitioner is an abuse of the process of the court, which cannot be allowed to perpetuate. Hence, F.I.R. of Murliganj Police Station Case No.57 of 2015 against the petitioner stands quashed and, accordingly, this application is allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	AFR
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