

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41086 of 2014

Arising Out of PS.Case No. -1324 Year- 2014 Thana -MUZFFARPUR COMPLAINT CASE
District - MUZAFFARPUR

- =====
1. Suresh Kumar Singh son of Late Tej Bali Singh, Resident of village- Gangapur, Post Narayanpur, Udham Singh Nagar, Dist. Udham Singh Nagar
 2. Yashodh Singh son of Late Trilok Singh, Resident of Hostel No. 2, Room No. 6, TDC Colony, P.O. P.S. Sant Nagar Haldi, District Udham Singh Nagar

.... Petitioners

Versus

1. The State of Bihar
2. Umashankar Choudhary son of Late Rajendra Choudhary R/o Mohalla Danu Chak, P.S. Kazi Mohammadpur, District Muzaffarpur

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Agarwal, Advocate

For the Opposite Party/s : Mr. Binod Kumar 2, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 13-12-2017

Heard learned counsel for the petitioners and
learned Additional Public Prosecutor for the State.

Although notice has been served upon the
complainant-Opposite Party No. 2 but he has not entered into
appearance in this case.

Learned counsel for the petitioners submits that
in the facts of the present case the order taking cognizance and
issuance of summon dated 13.08.2014 passed by learned Chief
Judicial Magistrate, Muzaffarpur in Complaint Case No. C-
1324 of 2014 (Trial No. 1812 of 2014) under Sections 406, 420



and 120B of the Indian Penal Code is fit to be quashed in exercise of the inherent power of this Court.

The petitioners have referred from the complaint petition enclosed as Annexure-1 to the application pointing out that the allegations contained therein without adding or subtracting anything out of that would clearly show that it is at best a case of civil dispute and accounting where the complainant-Opposite Party No. 2 has a grievance against the petitioners for the alleged non-payment of his transportation charge, payment of lesser amount against the bill submitted by the transporter and deductions against TDS.

According to the complainant-Opposite Party No. 2, he entered into agreement with Uttarakhand Seeds & Tarai Development Corporation Limited, Pant Nagar, District – Udham Singh Nagar (hereinafter referred to as the ‘Corporation’) on 01.10.2012 to work as a Transporting agent at Muzaffarpur, Regional Office of the said Corporation for the period 2012-13. It is pursuant to the said engagement of the complainant, he was called upon to handle certain responsibilities of the Corporation. In this connection the complainant-Opposite Party No. 2 alleges that on 14.09.2012 he had deposited a sum of Rs. 94,800/- with the Railway on



which after remission of 20% the balance amount of Rs. 75,840/- was required to be refunded to the complainant-Opposite Party No. 2 by the accused persons, but the accused persons did not pay the same to the complainant-Opposite Party No. 2. The complainant-Opposite Party No. 2 also got deposited Rs. 30,400/- towards the godown charges at Muzaffarpur, but the same was also not paid back to him. The complainant-Opposite Party No. 2 has further narrated that he had spent a sum of Rs. 30,903/- and Rs. 22,000/- respectively on purchase of Polythene for safely keeping the seeds which was promised to be returned to the complainant-Opposite Party No. 2. The complainant-Opposite Party No. 2 has also raised a grievance that he had been promised to pay a sum of Rs. 2,77,278/- for some additional work, but after doing the additional work, the amount was not paid despite his written and oral demand. Lastly, he submits that the accused persons got deducted an amount showing lesser delivery of seeds in the godown and in this way the accused persons had not paid the transportation charges amounting to Rs. 6,90,178.89. It is alleged that by showing extra payment in favour of the complainant-Opposite Party No. 2, accused had deducted more TDS amount just to harass the complainant-Opposite Party No.



2 by creating false records.

Learned counsel for the petitioners submits that on perusal of Annexure-3, which is copy of the agreement for Transport Agency entered into between the parties, it would appear that the agreement has an arbitration clause which reads as under:

“16. That all dispute in connection with the interpretation of meaning as effect any clause herein contained and all other disputes arising directly or indirectly at of any transaction in connection with the agreement shall be referred for arbitration under arbitration & conciliations act 1886 to the Chairman, U.K. Seeds and Trari Dev. Corporation Ltd., Pantnagar or his nominee whose award in the matter shall be final and finding both parties of this agreement. Only the Court of Rudrapur (Udham Singh Nagar) Uttarakhand shall have the jurisdiction. In faith and testimony the parties have executed this agreement at Haldi City/Town/District on the day, the month, the year and jurisdiction clause set out above in presence of witness.”

It is their submission that if at all the complainant-Opposite Party No. 2 had any claim on account of money towards the transportation or the additional work or that he feels that some more amount has been deducted on account of TDS, these issues could have been agitated in a properly



constituted reference to the arbitral tribunal. He submits that even perusal of the deposition of the complainant as also his witness produced in course of enquiry under Section 202 Cr.P.C., would show that the whole grievance of the complainant-Opposite Party No. 2 is with regard to non-payment of certain dues allegedly by the accused persons. In sum and substance, the argument of learned counsel is that it is a case where a civil dispute has been converted in a criminal proceeding.

Reliance has been placed on a judgment of the Hon'ble Supreme Court in the case of *Binod Kumar and Others vs. State of Bihar and Another* reported in (2014) 10 SCC 663, to submit that the Hon'ble Supreme Court has repeatedly held that where the given set of facts make out a purely civil wrong and the dispute is in the nature of commercial dispute arising out of a transaction of commercial nature or that it is a case of contractual dispute, this Court can exercise its inherent jurisdiction under Section 482 Cr.P.C. to quash the same in order to stop the abuse of the process of the court and in the interest of justice.

On the other hand, learned Additional Public Prosecutor for the State submits that in the present case learned



Magistrate has taken cognizance for the offences under Sections 406, 420 and 120B of the Indian Penal Code only after going to the materials on record, hence, no interference is required to the same.

I have considered the submission made at the bar and perused the records as also the judgment of the Hon'ble Supreme Court cited on behalf of the petitioner. A bare perusal of the statements made in the complaint petition as contained in Annexure-1 leaves no doubt in my mind that it is a pure civil dispute which has been tried to be converted into a criminal proceeding.

The narration of facts and the reasons shown for developing the grievance are only the non-payment of alleged dues on account of the deposits said to have been made by the complainant-Opposite Party No. 2 with the Railway or the amount which he has been claiming on account of transportation or purchase of Polythene etc. There is no element of a criminal offence and the reasons and motive behind the filing of the complaint case is duly reflected in the complaint petition. Sections 406, 420 and 120B of the Indian Penal Code under which cognizance has been taken are quoted hereunder for a ready reference:



406. Punishment for criminal breach of trust. –

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property. –

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

120B. Punishment of criminal conspiracy. – (1)

Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

In the case of ***Binod Kumar (supra)***, the Hon’ble Supreme Court was considering a case where there was an allegation of misappropriation of funds and the cognizance was



taken under Section 406 of the Indian Penal Code. In the facts of the case, while reviewing the judicial pronouncement on the subject, in paragraph 10 & 11 of the said judgment, the Hon'ble Supreme Court has held as under:

“10. In *Indian Oil Corpn. V. NEPC India Ltd.*, this Court has summarized the principles relating to exercise of jurisdiction under Section 482 CrPC to quash complaints and criminal proceedings as under: (SCC pp.747-48, para 12)

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few – *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre*, *State of Haryana v. Bhajan Lal*, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, *CBI v. Duncans Agro Industries Ltd.*, *State of Bihar v. Rajendra Agrawalla*, *Rajesh Bajaj v. State (NCT of Delhi)*, *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.*, *Hridaya Ranjan Prasad Verma v. State of Bihar*, *M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be



examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil



proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

11. Referring to the growing tendency in business circles to covert purely civil disputes into criminal cases, in paras 13 and 14 of *Indian Oil Corpn. Case*, it was held as under: (SCC pp.748-49)

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. 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. In *G. Sagar Suri v. State of U.P.*, this Court observed: (SCC p.643, para 8)

‘8. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in



law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.’

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

In the present case, there is a pure civil dispute having no criminal law element.

In view of the discussions hereinabove, I am of the considered opinion that petitioner instead of availing his remedy under the agreement which has been pointed out by learned counsel for the petitioners, took recourse to the provisions of the criminal law in a case which is of purely civil



nature.

In the circumstances stated hereinabove, this Court comes to a conclusion that it is one of those cases where a civil dispute has been converted into a criminal proceeding and the order taking cognizance has been passed by the learned Magistrate in a routine and mechanical manner.

In the result, the impugned order is hereby quashed and this application is, accordingly, allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
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