IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15998 of 2013

Arising Out of PS.Case No. -490 Year- 2012 Thana -PATNA COMPLAINT CASE District-PATNA

==

1. Syed Faisal Rizvi son of Late Syed Nasir Rizvi, Director of Canopy Dwelling Pvt. Ltd., Kalyan Nagar, Police Station- Hennur, Bangalore – 560043
2. Syed Yasir Rizvi son of Late Syed Nasir Rizvi, Director of Canopy Estate Pvt. Ltd., Kalyan Nagar, Police Station- Hennur, Bangalore – 560043

.... Petitioner/s

Versus

1. State of Bihar
2. Md. Syed N. Jilani @ Syed N. Alam son of Late S.N.Hassan, 135B, P.C.Colony, Patna – 800013

.... Opposite Party/s

==

Appearance :

For the Petitioner/s : Mr. Birendra Kumar Sinha, Sr. Advocate
: Mr. Rajnandan, Advocate
For the Opposite Party/s : Mr. Avinash Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, A.P.P.

==

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-06-2017

Heard Mr. Birendra Kumar Sinha, learned Senior Advocate appearing for the petitioners and Mr. Abinash Kumar learned Advocate for opposite party no.2.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed for quashing of the order dated 11.01.2013 passed by the learned Judicial Magistrate-1st Class, Patna in Complaint Case No.490(C) of 2012 whereby and whereunder the petitioners have been summoned to face trial for the offence punishable under Section 403 of the Indian Penal Code.

3. The aforesaid Complaint Case No.490(C) of 2012 was filed by opposite party no.2 on 20.02.2013 against these two petitioners. It is contended in the complaint that opposite party no.2 used to invest earnings time to time in profit making project. It is stated that the petitioners who are resident of Patna expanded their business in the city of Bangalore in the name of M/s Canopy Dwellings (Pvt.) Ltd. They induced him to invest money in their upcoming project at Bangalore. On their inducement, he invested rupees eighteen lacs in the aforesaid Canopy Dwellings (Pvt.) Ltd. in order to make money taking the advantage of its reputation and goodwill. However, the project failed.

4. It is stated that seeing the dark future of the project, he disassociated with the Company of the petitioners and demanded back his invested money along with profit and interest thereof. The petitioners accepted to return an amount to the tune of rupees thirty four lacs. They paid rupees eighteen lacs and odd through two different cheques dated 27.02.2011 and 10.03.2011 and thereafter they undertook that they will pay rupees sixteen lacs in sixteen installments of one lac each, but they in league and collusion with each others after payment of rupees eighteen lacs and odd stopped the further payment on flimsy ground. The complainant opposite party no.2 has alleged in the complaint that the accused petitioners misappropriated his hard earned money which was given to them under trust and rupees sixteen lacs which was promised to be paid in sixteen installments of one lac each was never paid to him.

5. The complainant was examined on solemn affirmation and apart from the complainant two other witnesses were examined in course of enquiry under Section 202 of the CrPC whereafter the petitioners were summoned to face trial for the offence punishable under Section 403 of the Indian Penal Code vide impugned order dated 11.01.2013.

6. It is contended by Mr. Birendra Kumar Sinha, learned Senior Advocate appearing for the petitioners that the petitioner no.2 has nothing to do with the business of M/s Canopy Dwellings (Pvt.) Ltd. He runs his business separately in the name and style as 'Canopy Estate (Pvt.) Ltd. He contended that the said M/s Canopy Dwellings (Pvt.) Ltd. is a company incorporated under the Indian Companies Act, 1956. He contended that from paragraph 4 of the complaint itself it would be evident that the complainant had invested the amount of rupees eighteen lacs in the Company. However, the company has not been made accused in the complaint. He contended that in absence of the Company, the petitioners in any capacity cannot be held to be vicariously liable for the offence committed by the Company. He contended that even otherwise the allegations made in the complaint would not attract the ingredients of the offence alleged as whatever amount was invested by the complainant has admittedly been returned to him.

7. On the other hand, Mr. Avinash Kumar learned counsel for the complainant submitted that the allegations made in the complaint have been supported by the witnesses examined in course of enquiry. According to him, apart from the principal amount the petitioners had also agreed to pay profit and interest over the amount invested which they failed to pay and, thus, dishonest misappropriation of property is clearly made out. He contended that non-impleadment of the company would be of no consequence in the present case as the Company was being run by these petitioners.

8. I have heard respective counsel of the parties and perused the record.

9. Section 403 of the Indian Penal Code reads as under:

> "**403. Dishonest misappropriation of property.**- Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

10. In order to prove the offence of dishonest misappropriation of property, it is to be proved (i) that the property was of the complainant; (ii) that the accused misappropriated the same or converted it to his own use; and (iii) he did so dishonestly.

11. Thus, it is to be seen in the present case whether the petitioners in any way holding the property of the complainant and he dishonestly misappropriated the property of the complainant to his own use. It would be evident from the complaint that the complainant had invested the amount in Canopy Dwellings (Pvt.) Ltd., a company incorporated under the Indian Companies Act. A company incorporated under the Indian Companies Act is a juristic person. It has right to sue with a liability to be sued.

12. The Indian Penal Code does not provide for vicarious liability for any offence alleged to be committed by a Company. The Hon'ble Supreme Court in **S.K.Alagh vs. State of Uttar Pradesh and Others [(2008)5 SCC 662]** and **Maksud Saiyed vs. State of Gujarat and others [(2008)5 SCC 668]** has clearly held that the Indian Penal Code does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.

13. The petitioners being office bearer of the company cannot be held vicariously liable for any act of the Company in absence of the Company being added as an accused.

14. Even otherwise, the admitted case of the complainant is that the project under which he invested the amount had failed. Hence, there was no question of amount being invested by him to have earned any profit. It is also an admitted case of the complainant that the entire principal amount invested by him has been refunded to him by the Company. In that view of the matter, in my considered opinion, the same would not attract the ingredients of the offence punishable under Section 403 of the Indian Penal Code as the amount entrusted by the complainant was returned to him by the Company. Thus, there is no question of dishonest misappropriation of any property of the complainant opposite party no.2.

15. In view of the discussions made above, the impugned order dated 11.01.2013 passed by the learned Judicial Magistrate, 1^{st} Class, Patna in Complaint Case No.490(C) of 2012 cannot be sustained. It is quashed accordingly.

16. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.06.2017
Transmission Date	28.06.2017