

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46128 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

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Uma Shankar Mishra Son Of Kumod Mishra R/O Mohalla- Bajaj Patti,
Madhuban Chhawani Chowk, P.S. And District-Motihari

.... Petitioner

Versus

1. The State Of Bihar

2. Ashok Kumar Sharma Son Of Sri Vishnudeo Sharma Resident Of
Dinkar Nagar Professor Colony, P.S.- Town, District- Begusarai

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Ratnagar Jha, Advocate
Mr. Saurabh, Advocate

For the Opposite Party/s : None.

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 05-07-2017

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

The petitioner, in the present case, is
seeking quashing of the order taking cognizance dated
07.04.2007, passed by learned Chief Judicial
Magistrate, Begusarai in connection with Complaint
Case No. 1898(C) of 2006, by which the learned
Magistrate has taken cognizance of the offences under
Section 323, 406, 420, 504/120(B) of the Indian Penal
Code.

The complainant alleged that the present
petitioner along with one Gama Singh took him to the
accused no. 1 namely, Birendra Singh and persuaded



him to be a partner in the construction of National Highway Road No. 28. The complainant was made to believe that on investment of Rs. 11 lacs as capital he will be getting 20% commission in the profit. It is thus the case of the complainant is that believing the representations given by all the three accused persons he brought money to the tune of Rs. 11 lacs, to become a partner in the firm and invested the said amount as capital, but, later on, he was not given his share in the profit. It is, however, alleged that on demand raised by the complainant all the three accused persons abused him and assaulted by fists.

Learned counsel for the petitioner submits that from perusal of Annexure-2, which is a deed of admission of partner, it would appear that the said partnership is between one Awadhesh Kumar Sharma and Birendra Kumar Singh. The present petitioner is not party to the said agreement. He further submits that the contents as contained in arbitration clause, and therefore dispute, if any, with respect to the profit in share may be taken in arbitration proceeding.

The learned Additional Public Prosecutor vehemently opposed the prayer of quashing.

The learned Magistrate has taken



cognizance in the present case after perusal of the statements made on solemn affirmation as also in course of inquiry under Section 202 Cr.P.C. all the witnesses have supported the prosecution. It is true that the Hon'ble Supreme Court has held that a civil dispute need not be given a criminal colour, however each case depends on its own peculiar facts and a slightest change in the facts would lead to change in the conclusion reached by the Court. The Hon'ble Supreme Court in fact cautioned the courts that its judgment should not be cited as Euclid's theorems. Reference in this regard may be made in the case of **Bharat Petroleum Corporation Ltd. and Anr. Vs. N.R. Vairamani and Anr.** since reported in **(2004) 8 SCC 579**. Further in the case of **Rajesh Bajaj Vs. State NCT of Delhi & Ors.** since reported in **AIR 1999 SC 1216**; wherein the Hon'ble Apex Court has held that both the civil and criminal proceeding may go on simultaneously, if the allegation made in the complaint gives rise to a prima facie case for initiation of a criminal prosecution.

In the facts and circumstances of the case, I am of the opinion that on two counts the present application should fail, firstly, that the application has



been filed for quashing in respect of an order passed in the year 2007, after a gap of six years and then the allegations are such that the truth can come only after the trial is held.

In the facts and circumstances of the case, I am not inclined to interfere with the order taking cognizance. Hence, this application stands dismissed.

(Rajeev Ranjan Prasad, J.)

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