IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47270 of 2013

Arising Out of PS. Case No.-366 Year-2008 Thana- PATNA COMPLAINT CASE District-Patna

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RAJIB BANERJEE S/O POPESH CHANDRA BANERJEE R/O ATITHI ABASAN, 43, G.T. ROAD, BLOCK NO.- 03, FLAT NO. 0-3, KONNAGAR, P.S.- KONNAGAR, DISTRICT- HOOGLY(W.B.)

... ... Petitioner/s

Versus

1. State Of Bihar.
2. Ashok Keshri S/O Late Dr. Deep Narain Prasad Office At Keshri Drug Agency, D-5, Mahima Place, G.M. Road, Govind Mitra Road, Patna 800004, P.S.- Pirbahore, P.O.-Bankipore, District- Patna Town-Patna.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Amresh Kumar Sinha, Adv
For the Opposite Party/s	:	Mr. Dharmendra Kr Sinha, Adv
For the State	:	Mr. MD. SUFIYAN (APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 02-08-2017

Heard learned counsel for the parties.

The present application under Section 482 of the Cr.P.C has been filed for quashing the order taking cognizance dated 27.01.2009 for the offence under Section 420/34 of the Indian Penal Code in Complaint Case No. 366(C) of 2008 pending in the court of Sri Amrit Raj, J.M. 1st Class, Patna.

Briefly stated, the facts of the case is that the complainant-opposite party no. 2 Ashok Keshri, filed a complaint case stating therein that he and his wife has medicine business having shop at Govind Mitra Road, Patna. It is further stated that the accused persons approached the complainant to appoint him as consignee agent for the State of Bihar and super distributor for the district of Patna, Bihar, for medicine of accused persons. An agreement dated 17.02.2008 and 28.02.2008, was signed between the parties for consignee agent for the State of Bihar and super distributor for the district of Patna. The complainant paid a sum of Rs. 1, 50,000/- by way of demand draft to the company namely, Pacific Biotech and as per the terms of the agreement, the company agreed to give 4 to 6 per cent commission to the consignee agent.

It has been further stated that the accused persons dispatched medicines of Rs. 54,00,3/-, which was sent by Patients Remedies and not by Pacific Biotech. It has been further alleged that the accused persons did not took any pain to sell the medicine in the market and the same was laid in the godown of the complainant. Even the commission, as agreed, was not paid to the complainant. In support of his complaint, the complainant was examined on S.A. by the court and in support of his complaint, witnesses were examined on behalf of the complainant and the court below took cognizance of the offence under Section 420/34 of the Indian Penal Code by order dated 27.01.2009, against three accused persons named in the complaint petition.. It has been stated by the petitioner that he was an employee of Pacific Biotech and accused nos. 1 and 2 were Directors of the company, whereas he was Sales Manager in the said company till 29.11.2007, and thereafter he was working in another company. It has been further stated by the petitioner that he was not posted at Patna when the agreement was made between Pacific Biotech and Maya Kesri, proprietor of Kesri Drug Agency on 17.02.2007 and 28.02.2007, and thereafter Maya Keshri handed over the demand drafts in the name of the company as Pacific Biotech. The agreement was signed at Kanpur. It has been further stated by the petitioner that he was an employee of the company-Pacific Biotech and all transactions including the payment of demand draft was made to Pacific Biotech and as such no case of cheating and misappropriation of money is made out against the petitioner.

While issuing notice to the complainant-opposite party on 06.12.2013, this Court had stayed the further proceeding pending in the court below.

Learned counsel appearing for both the parties have been heard at length.

I have perused the impugned order and the materials available on record.

The essential ingredient to attract Section 420 IPC is *mens rea* of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant. It is to be seen that whether the averments in the complaint make out a case to constitute an offence of cheating. Distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction.

After going through the terms and conditions of the agreement between the parties, it appears that the dispute is of civil nature. It is settled legal proposition that criminal liability should not be imposed in disputes of civil nature. The Apex court in the case of ***M/s Indian Oil Corporation vs. NEPC India Ltd. &Ors.,*** **(2006) 6 SCC 736**, has observed that civil liability cannot be converted into criminal liability. The substance of complaint is to be seen. Mere use of expression cheating in the complaint is of no consequence.

Moreover, the facts alleged in the complaint itself indicate that business dealing was between complainant with accused nos. 1 and 2 and petitioner (accused no. 3) is not responsible for any business dealing as he was only an employee of accused no. 1.

In the facts of the present case, the allegation against the complainant-petitioner does not constitute the offence as alleged against him and the order taking cognizance is liable to be quashed.

In the result, the impugned order dated 27.01.2009 taking cognizance is quashed, so far it relates to the petitioner.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	