

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.697 of 2017

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1. S. Suresh Kumar, Son of Sri D. Sambandan.
2. K. Nagrajan, Son of Sri Krishnamurthy Sivasambual,
Both are working for gain with L & T Construction Limited, Mount
Ponamalle Road P.S. Nandambakkan, District- Chennai- 600089, Tamil
Nadu.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sushil Kumar Mishra, Son of Shiv Kumar Mishra, resident of
Daniyalpur Teghara, P.S.- Teghara, District- Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar
Mr. Abhishek Kumar
For the State : Mr. Brajendra Nath Pandey
For the complainant : Mr. Ashwani Kumar
Mr. Dinkar Kumar

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER**

4 14-07-2017 The petitioners seek quashing of the order,

dated 17.05.2017, passed by learned Additional Chief
Judicial Magistrate V, Begusarai, in Complaint Case No.
1079C of 2017, whereby a petition on behalf of the
petitioners, under Section 245 of the Code of Criminal
Procedure, 1973 (hereinafter referred to as 'the Code'), for
their discharge has been rejected.

I have heard learned Counsel for the petitioners,
learned Counsel appearing on behalf of the respondent no.
2 and learned Additional Public prosecutor representing the



State of Bihar.

The case of the prosecution, as narrated in the complaint petition, is that the complainant is a partner of M/s M. B. Construction Company, having its office at Daniapur, Teghra, Begusarai. It is alleged that the complainant's firm had negotiated with the Project Managers of different projects mentioned in the complaint at Teghra for execution/construction of building and other project works and thereafter works were started on different sites and the complainant had started receiving payments on submission of bills. It is also the case of the complainant that during negotiation, the Project Managers had communicated to the complainant that 5 per cent of the total bill amount will be retained and after finding the works satisfactory, the entire retention amount would be released by the accused persons. It is also alleged in the complaint petition that the complainant thereafter approached the accused persons to clear his retention amount, but even after furnishing No Objection Certificate from the work site, the retention amount of Rs. 34,47,971/- was not released.

Mr. Sandeep Kumar, learned Counsel for the petitioners, has submitted that even if the entire allegations, as made in the complaint petition, are treated



to be true, no offence under any provisions of the Indian Penal Code is made out. According to him, filing of the complaint petition is abuse of the process of the Court. He has also submitted that the dispute, which the respondent no. 2 wants to raise in criminal proceeding, is purely of civil nature, which should not be allowed to continue.

Learned Counsel appearing on behalf of respondent no. 2 has, on the other hand, submitted that the respondent no. 2 is entitled to receive the said amount of Rs. 34,47,971/-, which is the retention amount, retained by the petitioners, as per the agreement and since the work has been completed by the respondent no. 2, the petitioners ought to have released the said amount.

I find substance in the submission made on behalf of the petitioners. The case of the prosecution, as has been narrated above, no criminal offence is made out on the basis of what has been alleged in the complaint petition. There is no allegation of dishonest intention from the very inception of contract between the parties. No element of cheating is available in the allegation made in the complaint petition. The respondent no. 2 could have pursued civil remedy available to him under the law. The filing of the complaint case, in my view, is an abuse of the process of the Court. In my view, the learned Court below



ought to have allowed the application under Section 245 of the Code, in the background of the facts, as narrated above.

Accordingly, this application is allowed. The impugned order, dated 17.05.2017, passed in Complaint Case No. 1079 C of 2016, is set aside and the petitioners stand discharged accordingly.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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