

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33821 of 2012

Arising Out of PS.Case No. -721 Year- 2010 Thana and District- ARRARIA

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Jayant Kumar Chatterjee, s/o Sri Pronob Kumar Chatterjee, DGM (Legal), Tata Teleservices Limited, P.S.-Srijan Tech Park, DN-52, Sector-V, Salt Lake, District-Kolkata, Local office-Maharaja Kameshwar Complex Frazer Road P.S.- Kotwali Patna, Pin-800001 and also at Shyama Bhawan, West Boring Canal Road, Near Laxmi Nursing Home, P.S.- Budha Colony District-Patna.

.... Petitioner

Versus

1. The State of Bihar
2. Afsar Ahmad son of Naimuddin Ahmad, resident of Near Model Public School, Azad Nagar, Ward No. 93, P.S. Araria, District-Araria

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Uma Kant Shukla
Mr. Ratnakar Pandey

For the Opposite Party/s : Mr. APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 05-05-2017

Heard the learned counsel for the petitioner and the learned APP for the State.

2. The petitioner seeks quashing of the order dated 23.08.2010 passed by Sri R.K. Ray, Judicial Magistrate, Araria in Complaint Case No. 721 (C) of 2010 and also entire criminal prosecution. The learned Magistrate finding prima facie case for the offence under Section 420 of the Indian Penal Code, ordered for issuance of summons against the petitioner as per impugned order.

3. The facts in brief is that the Opposite Party No. 2



(Complainant) filed a complaint case on the file of C.J.M., Araria. The complainant has alleged that the petitioner being an employee of Tata Teleservices Limited entered into an agreement with the complainant and his three brothers for installation of mobile tower of Tata Teleservices on his land bearing R.S. Khata No. 80, Khesra 297 and M.S. Khesra 367 and 368. They executed an agreement on 16.10.2006. The petitioner and other co-accused without any knowledge of the complainant and also violating the terms of agreement transferred the lease right to another company, namely, WTTIL. The complainant gave a legal notice to the petitioner on 01.12.2009, which was not replied and thereby, the petitioner has cheated the complainant and his brothers. In course of enquiry, the statement of complainant and other witnesses were recorded and the court finding prima facie case for the offence under Section 420 of the Indian Penal Code, ordered for issuance of summons against the petitioner.

4. The counsel for the petitioner submits that the petitioner is simply an employee of Tata Teleservices Ltd. and being an employee, he was authorized to sign the agreement. The Company, as per agreement, has installed its tower on the land of the complainant as per Clause 1(c) of the said agreement. The Company has paid the agreed licence fee to the complainant



regularly. The allegation of the complainant that the mobile tower of Tata Teleservices was not installed is false and baseless. The counsel drew the attention of this Court at Annexure-5 to show that his Company is making payment regularly to the complainant and his brothers as per cheque issued by their Company. It was further submitted that the Opposite Party No. 2 has not controverted the version of the petitioner by filing counter affidavit. It was further submitted that both the parties are bound by the agreement, which was entered into by both the parties. As per Clause 11 of the said agreement, it was agreed that if any dispute or differences arises between the parties in future during continuance of this proceeding, it shall be referred to the arbitration. The complainant without exhausting the legal remedy referred in agreement has filed the complaint case only to harass the petitioner.

5. The learned APP, on the other hand, opposed the submission.

6. On hearing both sides and considering the documents available on record, I find that both the parties entered into an agreement and as per agreement, the petitioner has installed the mobile tower. It further appears that the agreement to install tower was between the Tata Teleservices Ltd. and complainant and his brothers. The petitioner being an authorized signatory had put his



signature on the agreement. It further appears that there is a stipulation that the matter could be referred to arbitrators in the event of any dispute between the parties in terms of Clause 11 of the agreement. It further appears that the petitioner has paid the lease / licence amount in favour of the complainant and his brothers. The dispute between the parties appears to be a civil dispute requiring determination of the rights and liabilities of the parties. The Opposite Party No. 2 in spite of service of notice did not appear to controvert the version of the petitioner by filing counter affidavit.

7. Considering the submission at Bar and as also the materials available on record, I find that the allegations asserted by Opposite Party No. 2 (Complainant) do not attract the provision of Section 420 of the Indian Penal Code. The impugned order is therefore set aside and this application is allowed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
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