

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22140 of 2014

Arising Out of PS.Case No. -3565 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Bachcha Lal Mahato S/O Kailash Mahto
 2. Aachche Lal Prasad @ Achche Lal Mahto S/O Kailash Mahto, Both Resident of Village- Durgwalia, P.S.- Shikarpur, District- West Champaran
 3. Sanjay Yadav S/O Chandasi Yadav, Resident of Village- Siyarahi, P.S.- Shikarpur, District- West Champaran
 4. Arbind Mahto S/O Yogeshwar Mahto, Resident of Village- Gokhala, P.S.- Shikarpur, District- West Champaran
 5. Dilip Kumar, S/O Amiri Prasad, Resident of Village- Barwa Parsauni, P.S.- Inarawa, District- West Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Shashi Bhushan Kumar Yadav, S/O Sri Ashutosh Prasad Yadav, Resident of Village- Belwa Bahuari, P.S.- Gaunaha, District- West Champaran. Presently residing at Flat No. 402, Mundeshwari Saryu Sadan Apartment, P.S.- Rajeev Nagar, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Adv.
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 19-07-2017

Heard the learned counsel for the petitioner.

2. On 28.06.2017 the matter was adjourned on account of non-appearance of the learned counsel for the opposite party no.2, who has filed vakalatnama on behalf of the opposite party No.2. Today also on calls, nobody is present for opposite party no.2.

3. The short facts of the case are that the opposite party no.2 had filed one complaint case bearing No. 3565-C of 2012 dated



24.12.2012 against the petitioners herein alleging therein that the petitioners herein have taken loan on pretext of purchasing land for the purpose of construction of house. The opposite party no.2 is said to have advanced a sum of Rs.7,50,000/- to the petitioners herein by way of loan. It is alleged that on several demands being made by the opposite party no.2, the petitioners herein had paid some amount, but refused to pay the entire amount. It is further alleged that an agreement was executed between the parties.

4. The learned trial court by an order dated 28.01.2013 has found that a prima facie case under Sections 341, 323, 379, 504 and 420 of the Indian Penal Code is made out and has summoned the accused persons i.e. the petitioners herein.

5. In such view of the matter, the petitioners have preferred the present petition under Section 482 Cr. P.C. for quashing of the order dated 28.01.2013 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 3565-C/ 2012,

6. The learned counsel for the petitioners submits that the instant case is purely a civil in nature. In fact, the petitioners had filed an FIR bearing Rajeev Nagar P.S. Case No. 114 of 2012 dated 13.10.2012 against the opposite party no.2, alleging therein that the said opposite party no.2 had taken money from the petitioners in lieu of promise for employment. Thereafter, he failed to return the said



money. It is submitted that the F.I.R. is prior to the complaint filed by the opposite party no.2. The learned counsel for the petitioners further submits that the entire action of the opposite party no.2 is malafide and at best he has recourse to the civil proceeding and no criminal proceeding would lie in the present case. The learned counsel for the petitioners refers to a judgment reported in 2016(1) SCC 348 **ARCI v. Nimra Cerglass Technics (P) Ltd.**, and has drawn attention of the Court towards paragraph-23 of the above judgment, which is quoted herein below:

23. In *Indian Oil Corpn. v. NEPC India Ltd.*, this Court observed that civil liability cannot be converted into criminal liability and held as under: (SCC pp. 748-49, paras 13-14):

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.*¹⁰ this Court observed: (SCC p. 643, para 8)



‘8. ... It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.’

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

7. It is a trite law that recourse to criminal proceeding cannot be resorted to for the purpose of civil remedy to a civil cause of action. It is equally a settled law that recourse to criminal remedy cannot be taken where the said matter is purely civil in nature. The



case projected in the complaint petition is purely civil in nature and has been filed with a malafide intention only with a view to overcome and counter blast the criminal case lodged by the petitioners herein i.e. Rajeev Nagar P.S. Case No. 114 of 2012 dated 13.10.2012 and further to extract money from the petitioners herein.

8. In this connection reference be had to a case reported in 1992 Supp (1) SCC 335 (**State of Haryana v. Bhajan Lal**). It would be useful to quote paragraph-102 of the said judgment i.e. **State of Haryana v. Bhajanlal** (supra):

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a



cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without any order of a Magistrate as contemplated under Section 155(2) of the code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. I find from the facts and circumstances of the case as well as from a bare reading of the complaint that no cognizable



offence is made out and further the entire complaint smacks of a malafide act on the part of the opposite party no.2. The law laid down by the Hon’ble Apex Court in the case of **State of Haryana v. Bhajanlal** (supra) squarely covered the present case, as such the order taking cognizance dated 28.01.2013 is liable to be quashed.

10. Having regard to the facts and circumstances of the case, the instant petition is allowed, the order dated 28.01.2013 passed by Smt. Reshma Verma, J.M. Ist Class, Patna in Complaint Case No. 3565-C of 2012 is hereby quashed and further, the entire proceedings emanating therefrom also stands quashed.

11. There shall be no order as to costs.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27-07-2017
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