

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19416 of 2014

Arising Out of PS.Case No. -1447 Year- 2011 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Mrs. Nira Anupam W/o Sri Amit Ranjan resident of First floor, G.P. Market, Ashadeep Nursing Home Compound, Bhikhna Pahari, P.S.- Pirbhore, District-Patna.
 2. Divesh @ Devesh Kr. Son of late Rabindra Kumar Verma C/o erstwhile Balajee Securities 2nd floor, L.O. House, Exhibition Road, P.S.- Gandhi Maidan, resident address at A-75, Kankarbagh Housing Colony, Patna-800020

.... Petitioner/s

Versus

1. The State of Bihar through The Principal Secretary, Department of Law and Justice Government of Bihar, Patna
2. M/S H.A. Buildcom Pvt. Ltd having it's office at UG-3, Saket Tower, S.P Verma Road, P.S.- Gandhi Maidan, District- Patna through it's director Mr. Farooque Haider, Son of Sri Samim Haider
3. Mr. Farooque Haider Son of Sri Shamim Haider G-3 Saket Tower, S.P. Verma Road, P.S.- Gandhi Maidan, Dist.- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gajendra Prasad
For the Opposite Party/s : Mr. Krishna Prasad Singh
For the State : Mr. Umesh Nand Pandit, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-07-2017

1. Heard both sides.
2. This application has been filed under Section 482 of the Cr.P.C. to quash the order dated 07.01.2013 passed by the Md. Saleem Judicial Magistrate, 1st Class Patna in Complaint Case no. 1447 (C) of 2011 whereby cognizance under Section 403 and 420 of the IPC was taken against the petitioners.
3. The facts, in brief, is that M/s Buildcom Private Ltd. a



construction company engaged in road construction work under some project of Government of India needed heavy road building machinery like POCLAIN-210 etc. for which the company approached the petitioner no.1 (Mrs. Nira Anupam). The petitioner Nira Anupam works as a facilitating agent for making available heavy machinery required in construction work. Her agency works as go-between machinery provider and the users and thereby earns their agency commission. The accused no.1 who is petitioner before this Court represented himself as owner of POCLAIN-210 machine agreed to supply machine on rent to the complainant. A tripartite agreement between Prani Devi and Mr. Haidar of M/s Buildcom and Mrs. Nira Anupam was prepared and it was signed by them and witnessed by two persons namely, Atul Avinash and Sachin Kumar. As per agreement, the petitioner no. 1 had to procure the need of machinery from M/s Buildcom Private Ltd and Mrs. Prani Devi had to supply the machinery to Buildcom Private Ltd on hire through these petitioners who were entitled to receive commission. In course of business transactions M/s Buildcom gave a cheque of Rs. 1.25 lacs on 28.12.2010 as advance/security in the name of M/s AQUAS Engineering Enterprises. The cheque was encashed and Rs. 1.20 lacs was transferred in the account of Mrs. Prani Devi. The accused persons in the league and collusion of each other received Rs. 2 lacs



as advance and Rs. 1.25 lacs through two cheques dated 28.12.2010 and one cheque for Rs. 25,000/- in the name of their firm M/s AQUAS Engineering Enterprises. They further received Rs. 1.10 lacs on 15.01.2010 in the name of Mr. Irfan and in this manner they received total Rs. 4.35 lacs from the complainant companies as advance for the supply of POCLAIN-210. The accused persons never sent any machine like POCLAIN-210 after receiving the amount. The complainant tried to meet the accused persons but they always evaded and assured to supply machinery by giving false assurance. The accused persons have thus cheated the complainant and committed criminal breach of trust in collusion with each other.

4. The learned counsel for the petitioners submits that as per contract, the POCLAIN-210 machine was provided to the complainant on 27.12.2010 and the complainant started taking work. The machine got crack down and so on the request of complainant, the petitioners company supplied another machines. After removing defect by the petitioners, the first machine remained in possession of the complainant for his use on the same terms and conditions. Subsequently, one more machine was supplied to the complainant, which remained in his use. All the three machines were sent from Varanasi. A total sum of Rs. 9,54,600/- accrued towards the rent against the complainant for which the petitioners requested several



times for making payment. The petitioners agent Atul Avinash who is accused no. 3 lodged an information with SHO of Gandhi Maidan P.S. on 07.04.2011, on the basis of which, a Gandhi Maidan P.S. Case No. 104 dated 13.04.2011 was registered for the offence under Section 406 of the I.P.C. The complainant having come to know about lodging the police case against him, has filed the present complaint case on 30.04.2011 as counter blast to the police case of the petitioners. It was further submitted that one of the parties to the agreement had filed Cr. Misc. No. 12075 of 2014 before this Court for quashing the said order dated 07.01.2013 of cognizance. The said Cr. Misc. was allowed on 17.11.2014 and proceeding was quashed with respect to said accused Mrs. Prani Devi. The case of these petitioners is on better footing as they are service provider and so cognizance order against these petitioners is fit to be quashed.

5. The learned counsel for the informant and APP opposed the submissions. It was submitted that these petitioners have cheated the complainant and committed breach of trust. They took money from the complainant, but did not supply the machinery and so they are liable to be prosecuted.

6. On perusal of the documents annexed with the petitions, I find that these petitioners had entered into a tripartite agreement for supplying POCLAIN-210 machine to the complainant (second party



to the agreement). The said agreement was signed by these petitioners as third party to the agreement and Mrs. Prani Devi as first party. The copy of the agreement has been annexed as Annexure-1 of the application. The said agreement paper is admitted document. In column 12 of the said agreement, an option was given to the first and second party to terminate the agreement for hire by giving one month's prior notice which shows that Mrs. Prani Devi and complainant were the real party to terminate the agreement. These petitioners were third party to the said agreement and they had to provide services to both the parties i.e. owners and user of the machineries. The complainant used the machineries and a total sum of Rs. 9,54,600/- became due towards rent of machines. The complainant did not pay the rent in spite of repeated demands by these petitioners. The petitioner no. 2 suspecting foul play on the part of the complainant lodged a police case against the complainant vide Gandhi Maidan P.S. Case no. 104 of 2011 for the offence under Section 406 of the I.P.C. on the allegation that the complainant has defaulted in making payment of rent of their machinery. The said case was lodged on 07.04.2011 and it was registered on 13.04.2011. After one month of institution of the case, the compliant has filed the present complaint case. The act of the complainant appears after thought in face of earlier police case of the petitioners. The



dispute between the parties appear to be civil dispute regarding non supply of machinery/non payment of rental amount. The cognizance order with respect to Mrs. Prani Devi has been quashed on her petition. The case of these petitioners stands on better footing as he was service provider to both the parties on a fixed rate of commission for the services rendered to them and so the criminal prosecution of these petitioners would amount to abuse of process of the Court.

7. In view of the discussions made above, the cognizance order dated 07.01.2013 passed by Md. Saleem Judicial Magistrate, 1st Class Patna is quashed and the application is allowed.

(Sanjay Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07.07.2017
Transmission Date	07.07.2017

