IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1465 of 2014

Arising Out of PS.Case No. -515 Year- 2013 Thana -SHRIKRISHNAPURI District- PATNA

Suresh Prasad Singh Son Of Late Siyaram Singh Resident Of Mohalla-Dujara (Near Devi Sthan), P.S.-Budha Colony, District-Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sanjay Kr. Singh Son Of Sri S.N. Singh Resident Of Flat No.-E/33 4th Floors, Krishna Apartment Boring Road, P.S.-Sri Krishnanpuri, District-Patna.

.... Opposite Party/s

with

Criminal Miscellaneous No. 3808 of 2014

Arising Out of PS.Case No. -515 Year- 2013 Thana -SHRIKRISHNAPURI District- PATNA

Indu Mala Sharma Wife Of Sanjeet Kumar Sharma R/O Mohalla-Dujra (Near Devi Asthan) P.S. Budh Colony, Distt Patna

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

with

Criminal Miscellaneous No. 53687 of 2013

Arising Out of PS.Case No. -72 Year- 2013 Thana -SHRIKRISHNAPURI District- PATNA

Sanjeet Kumar Sharma Son Of Sri Surendra Sharma Resident Of Village- Flat No. 303, Taluka Apartment, Budha Colony, P.S.- Budha Colony, District- Patna

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

Appearance :
(In Cr.Misc. No. 1465 of 2014)

For the Petitioner/s : Mr. Gyanendra Kumar Singh, Adv.
Mr. Gopal Govind Mishra, Adv

For the Opposite Party/s : Mr. S.D. Sanjay, Addl. S.G.
Mr. Sanjay Singh Adv.
Mr. Kumar Virendra Narayan, APP

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(In Cr.Misc. No. 3808 of 2014)

For the Petitioner/s : Mr. Gyanendra Kumar Singh, Adv.
Mr. Gopal Govind Mishra, Adv

For the Opposite Party/s : Mr. S.D. Sanjay, Addl. S.G.
Mr. Sanjay Singh Adv.
Mr. Kumar Virendra Narayan, APP

(In Cr.Misc. No. 53687 of 2013)

For the Petitioner/s : Mr. Gyanendra Kumar Singh, Adv.
Mr. Gopal Govind Mishra, Adv

For the Opposite Party/s : Mr. S.D. Sanjay, Addl. S.G.
Mr. Sanjay Singh Adv.
Mr. Kumar Virendra Narayan, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 05-07-2017

Heard both sides.

2. The petitioners filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Code) for quashing Srikrishnapuri P.S. Case No. 515/2013 registered under Sections 420, 467, 468, 471, 120B of the Indian Penal Code.

3. The informant, Sanjay Kumar Singh, said to be the Chairman of Helios Group of Companies, alleged that Sanjeet Kumar Sharma, who was the Executive Director of the Company till February, 2013, has fraudulently executed a deed of agreement for development of land of Helios group of companies with the company owned by Akash Gautam run by wife and father-in-law of Sanjit Kumar Sharma. It is further alleged that from the development agreement, it would appear that Sanjit Kumar Sharma has stated in the

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agreement that Rs. 3,08,45000/- was received by the Helios group of companies but the company did not receive any farthing nor any amount was deposited in the account of company. It is alleged that Sanjit Kumar Sharma, with the help of his wife and father-in-law, the petitioners, committed offence in order to cause loss and to cheat the company. On the basis of statement of the informant Srikrishnapuri P.S. case No. 515 of 2013 is registered.

4. Indu Mala Sharma, the petitioner of Cr. Misc. No. 3808 of 2014, and Suresh Prasad Singh, the petitioner of Cr. Misc. No. 1465 of 2014, are wife and father-in-law respectively of Sanjit Kumar Sharma and Sanjit Kumar Sharma is petitioner of Cr. Misc. No. 53687 of 2013.

5. The learned counsel for the petitioners submits that a liquidation proceeding is going on against Helios group of companies and the same is pending before this court. The informant is not at all competent to lodge the FIR against any director of the company which is under liquidation. The informant should have filed petition in the liquidation proceeding itself, if any director of the company committed any fraud. It is further submitted that no offence under any sections of the IPC is made out. The learned counsel for the petitioners further submits that in view of Section 621 of the Companies Act, 1956 institution of FIR is barred and no court shall

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take cognizance of any offence.

6. On the other hand, the learned counsel for the opposite party No.2, submits that under the Companies Act there is no bar in institution of the case. The FIR has already been instituted and the investigation is still going on. Investigation of a case for cognizable offences cannot be prevented unless it is barred by express provisions of law.

7. The question arose for consideration as to whether on the bare contents of the FIR any offence is made out or not and the institution of FIR is prohibited by any provisions of the Companies Act?

8. It appears from perusal of the contents of the FIR that the informant has made specific allegation that petitioner, Sanjit Kumar Sharma, who was Executive Director of the Helios group of companies before February, 2013, in collusion with his wife and father-in-law, who are directors of another company, namely, Sybare Built Infra Pvt. Ltd., had entered into an agreement for development and sale of the properties of Helios group of companies. Sanjit Kumar Sharma made stipulation in the agreement deed itself that Rs. 3,08,45,000/- shall be paid to the Helios group of companies but not even a single farthing is deposited in the account of Helios group of companies. From the contents of the agreement itself, it is apparent

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that an attempt was made to cause loss and to cheat the Helios group of companies.

9. Therefore, I find no substance in the submission of the learned counsel for the petitioner that no offence on the basis of contents of the FIR is made out.

10. The second point for consideration is as to whether FIR under Section 621 of the Companies Act or under any law of the Companies Act is barred or not?

11. Section 621 of the Companies Act reads as follows:-

> **"621. Offences against Act to be cognizable only on complaint by Registrar, shareholder or Government:-**
> **(1.) No Court shall take cognizance of any offence against this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorized by the Central Government in that behalf:**
> **Provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.**
> **[Provided further that the Court may take cognizance of offence relating to issue and transfer of securities and non-payment of dividend on a complaint in writing by a person authorized by the Securities and Exchange Board of India.]**
> **[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), where the complainant under sub-section (1) is the Registrar or a person authorized by the Central Government, the personal attendance of the complainant before the Court trying the offence shall not be necessary unless the Court for reasons to be recorded in writing requires his personal attendance at the trial.]**
> **(2.) Sub-section (1) shall not apply to any action taken by the Liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters included in Part VII (sections 425 to 560) or in any other provisions of**

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this Act relating to the winding up of the companies.
(3.) A Liquidator of a company shall not be deemed to be an officer of the company, within the meaning of sub-section (1).”

12. From perusal of the proviso of sub-section (1) of Section 621 of the Companies Act, it appears that there is no bar in institution of FIR against any company or any officer thereof. It is well settled that FIR with regard to cognizable offences should not be quashed unless its institution is barred by any provision of law or no offence on the basis of allegations made in the FIR is made out.

13. Having considered the facts aforesaid, I find no merit in the quashing petitions and the same are, accordingly, dismissed.

(Prabhat Kumar Jha, J)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2017
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