

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28308 of 2014

Arising Out of PS.Case No. -140 Year- 2010 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. The Managing Director, Tata Motors Limited, DGP House, Worli, One Forbes,
Dr. V.B. Gandhi Marg, Fort, Mumbai S.C. Kulkarni Son of Chitambar Rao,
Assistant Vice President Litigation Resident of Think Techno Campus,
Building A 2nd floor Off Pokwan Road-2 Thane West 400601

.... Petitioner/s

Versus

1. The State of Bihar
2. Rakesh Kumar Miloo Son of Sri Jang Bahadur Vidyarthi Resident of Mohalla -
Pitambara Mandir Colony, P.S.- Alamganj Town & District - Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli
Mr. Prince Kumar Mishra
Mr. Sanket

For the O.P. No. 2 : Mr. Dinewshwar Mishra

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 06-09-2017

This application under Section 482 of the Code of Criminal
Procedure has been filed to quash the order dated 12.03.2010 passed
by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case
No. 140 (C) of 2010 whereby and whereunder the learned Magistrate
finding prima facie case for the offence under Sections 420 and 385
of the Indian Penal Code, summoned the petitioner and other co-
accused.

2. Heard both sides.

3. The Opposite Party No. 2 filed a complaint case on the



file of the learned C.J.M. alleging inter alia that the complainant was known to accused no. 6 and on his inspiration and assurance of facilitation of loan on cheap rate from TATA Motors Finance Ltd., he entered into an agreement to purchase a vehicle from accused no. 2 M/s Guinea Motors Pvt. Ltd. The complainant paid Rs. 1,32,500/- to Guinea Motors and the balance amount of Rs. 4,00,000/- was to be financed by TATA Motors Finance Ltd. A receipt was issued from which the complainant learnt that the agreement was for the sale of Sumo Spacio Gold vehicle instead of the desired Sumo Victa Vehicle. The complainant raised protest and thereafter, a fresh agreement for purchase of Indica DLS Vehicle was executed. The amount of Rs. 1,32,000/-, which was given to the accused No. 2, was agreed to be adjusted against the new loan account after deducting an amount of Rs. 2500/- towards cancellation charge. The balance price of Rs. 2,60,000/- for Indica DLS Vehicle was agreed to be financed by TATA Motors Finance Ltd. As per agreement, 20 post dated cheques for an amount of Rs. 7115/-, one cheque for Rs. 7070/- and one blank signed cheque by way of security were also handed over. The complainant withdrew his statement of account from the bank on 31.12.2009 and found that on 03.05.2008, the accused persons in criminal conspiracy have used one cheque to withdraw an amount of Rs. 11,230/- from his account. The complainant filed a complaint case



as regards fraudulent withdrawal of Rs. 11,230/- from his account. In course of enquiry, the complainant was examined on S.A. besides two other witnesses. The learned Magistrate finding prima facie case has summoned the petitioner and other co-accused.

4. The learned counsel for the petitioner submits that the learned Magistrate has passed the impugned order in mechanical manner without appreciating the facts mentioned in the complaint petition. This petitioner, who has been cited as accused no. 7 in the complaint petition, is the Managing Director of TATA Motors Ltd. posted at Mumbai. The petitioner had no role whatsoever in connection with the present complaint case. There is absolutely no allegation against this petitioner even then the court below has observed that there are sufficient material against the petitioner to issue process of summon for the offence under Sections 420 and 385 of the Indian Penal Code. The petitioner is manufacturer of vehicles and he had no concern with the financing of loan to the complainant. The agreement for getting loan was entered into by the complainant and accused nos. 1 to 6. The complainant has defaulted in payment of installment of loan amount and has not evaded his own liability for paying of the loan against TATA Indica DLS Vehicle. The complainant availing the loan of Rs. 2,60,000/- from TATA Motors Finance Ltd. took delivery of Indica DLS Vehicle from M/s Guinea



Motors Pvt. Ltd. on 17.11.2007. He defaulted in payment of monthly installment and in total a sum of Rs. 4,28,519/- fell outstanding due against the complainant as on 23.09.2011. It has been submitted that the present case has been filed as counter blast to the complaint case No. 482 of 2010, which was filed by the Tata Motors Finance Ltd. The cheques, which were given by the complainant, bounced for which legal notice was given to the complainant on 15.01.2010. The complainant having come to know about filing of the complaint case has lodged the present complaint case only to put pressure on the financier. The complainant has compromised the case with other co-accused after receiving an amount of Rs. 11,230/- through demand draft No. 024508 dated 15.01.2011 with respect to which the present complaint case was filed. The TATA Motors Finance Ltd. has filed a Complaint Case No. 11697/SS/09 on 29.01.2009 at Mumbai under Section 138 of the N.I. Act on account of dishonour of cheque No. 969513 dated 21.11.2008 issued against the loan agreement for Indica DLS Vehicle. The said case is presently pending in the court, 62nd, Dadar Court, Maharashtra. In the said case, the complainant (O.P.No. 2) has been summoned. It has been further submitted that the present case has been lodged against Managing Director of TATA Motors Ltd. The TATA Motors Ltd. Company has not been made accused and so, no vicarious liability can be fastened upon the



petitioner for the actions of the employees of a dealer of TATA Motors Ltd. The TATA Motors Ltd. has not entered into or signed any agreement with the complainant and so, arraying the name of the Managing Director, TATA Motors Ltd. as accused is an abuse of process of Court. The impugned order in view of the above facts is not legally sustainable and is fit to be quashed.

5. The learned counsel for the Opposite Party No. 2 as well as the learned APP for the State opposed the submissions, but they concede that the case has been compromised with other co-accused.

6. On perusal of complaint petition as well as documents on record, I find that this petitioner was the Managing Director of TATA Motors Ltd., Mumbai. On going through the complaint petition, I find that there is absolutely no allegation of cheating or putting the Opposite Party No. 2 in fear of injury in order to extort money. The allegation of cheating and committing fraud in executing document by the complainant is against other co-accused. The complainant has already entered into compromise with other co-accused after receiving an amount of Rs. 11,230/-. There are two criminal cases against the complainant, which were filed by other co-accused with respect to the cheques bounced on account of insufficient fund. The allegation made in the complaint petition even if taken to be correct in its entirety do not disclose an offence under Section 420 or 385 of the Indian Penal



Code. There is general and bald allegation in the complaint petition. The petitioner is a juristic person residing at Mumbai and on the date of alleged agreement, he was posted as Managing Director of TATA Motors Ltd. He had no role at all in the affairs of the financial Company TATA Motors Finance Ltd. or the complainant.

7. In this regard, I would like to refer to the case of Eicher Tractor Ltd. & Others Vs. Harihar Singh reported in (2008) 16 S.C.C. 763. I find that in the said case the appellant after issuing a legal notice, filed complaint case against the respondent. The lower court finding prima facie case for the offence U/s 138/142, 141 of N.I. Act, ordered for issuance of summons against the respondent. Subsequent to the said case, respondent filed complaint case no. 1343 of 2004 alleging therein that the appellant had stolen the cheques and after making forgery and interpolation, presented the same in Bank and thus committed an offence punishable under Sections 468 and 471 of the Indian Penal Code. The Magistrate took cognizance on 08.02.2005. The cognizance order was challenged before Hon'ble Allahabad High Court under Section 482 of Cr.P.C. which after hearing was dismissed. The matter went to Apex Court where it was allowed and proceeding against the appellant was quashed holding that the said case squarely covered within the parameters indicated in category (7) of Bhajan Lal case (1999 Supp (1) S.C.C. 335).



8. The principles relating to exercise of jurisdiction under section 482 of the Cr.P.C. to quash the complaint and criminal prosecution have been considered by the Apex Court in several decision. In state of Haryana and others vs. Bhajan Lal and others [1992 Supp (1) SCC 335] certain parameters have been pointed out in paragraph 102 by the Supreme Court under which prosecution launched in a complaint or FIR may be quashed in exercise of jurisdiction under section 482 of the Cr.P.C.. It reads as under:-

“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 an 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."

The present case is squarely covered by the Principle laid down by the Apex Court in above ruling. The criminal prosecution of this petitioner in above circumstance appears to be an abuse of process of Court.

9. Accordingly, this application is allowed and the order



dated 12.03.2010 passed by the learned Judicial Magistrate, 1st Class,
Patna in Complaint Case No. 140 (C) of 2010 is hereby quashed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.09.2017
Transmission Date	13.09.2017

