

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33336 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHAGALPUR

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Sushil Kumar Thakur, S/o Ramswarath Thakur, Resident of C/O Pankaj Kumar
Moh Mahabir Nagar Sai Chak Beur Ps Phulawari Shairf Patna, Assistant Manager

.... Petitioner/s

Versus

1. The State Of Bihar
2. Santosh Sarawagi, S/o Late Fatechand Sarawagi Prop, M/S Saurav Medical
Agent M.P. Dwivedi Road P.S. Kotwali, District- Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bipin Bihari Singh, Advocate
For the State : Mr. R.B.S. Pahepuri, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: -----07-2017

1. This application has been filed by the petitioner for quashing the order dated 21.11.2009 passed by learned Sub Divisional Judicial Magistrate, Bhagalpur in Complaint Case No. C 1191 of 2009 by which cognizance has been taken against him under Sections-420, 406, 120(B) of the Indian Penal Code.

2. The case in brief is that the complainant is Proprietor of M/S Saurav Medical Agency, Bhagalpur which is stockist of M/s Galpha Laboratories Ltd., Exhibition Road, Patna which manufactures and market the medicines. The complainant collected goods of bulity of T.R. No. 30486 dated 06-03-2006 on 09-03-2006 and goods of bulity of T.R. No.



28208 dated 09-02-2006 on 11-02-2006 through M/s Vikash Roadways for carriage along with another bulity as mentioned in the complaint petition. The drafts were received by Md. Faisal Bin Abdul Aziz who was medical representative of M/s Galpha Laboratories Ltd., Exhibition Road, Patna at the instance of the petitioner and other accused persons named in the complaint petition. The complainant already paid Rs. 1,33,096.45 paise along with other dues. It is alleged that all the accused persons committed fraud with the complainant to grab the amount of the said drafts and subsequently, made demand of Rs. 1,37,641/- from the complainant regarding the goods sent through T.R. No. 30486 dated 06-03-2006 and T.R. No. 28208 dated 09-02-2006 and threatened the complainant in several ways. The accused persons wrongly claimed the money regarding the goods vide T.R. No. 30488 dated 06-03-2006 but in fact there is no transportation from Patna to Bhagalpur vide T.R. No. 30488 dated 06-03-2006 nor the complainant received any goods from the said T.R. No.

3. The learned Magistrate has after holding inquiry u/S 202 Cr.P.C. found prima facie case against the petitioner u/Ss 420, 406, 120B of the Indian Penal Code.

4. Counsel for the petitioner has submitted that firm



of the complainant namely, M/S Saurav Medical Agency, Bhagalpur was working as stockist of M/s Galpha Laboratories Ltd., Exhibition Road, Patna. Petitioner namely, Sushil Kumar Thakur, as staff of M/s Galpha Laboratories Ltd and is working on the post of Assistant Manager (Accounts) and he has been given power by way of Power of Attorney dated 22-06-2006 executed by Director of the Company for taking all legal steps for recovery of amount which was lying dues with the firm of the complainant and the transporter namely Vikas Road ways who delivered the goods in connivance of the complainant without built.

5. M/s Galpha Laboratories Ltd was supplying the goods to the firm of the complainant as per the demand by the complainant. The firm of the complainant was required to take goods after making payment of the invoice amount. The goods worth Rs. 21,11,329.25 by invoice dated 29-02-2006 T.R. dated 06-03-2006 and goods worth Rs. 21767.20 by invoice dated 28-02-2006 T.R. dated 09-02-2006 were dispatched to M/s Saurav Medical Agency through Vikas Road ways by M/s Galpha Laboratories Ltd. The company of the complainant M/s Saurav Medical Agency in connivance with the transport company took the delivery of goods without making payment of the invoice



amount. The company thereafter asked the transporter either to make payment or to recall the goods from M/s Saurav Medical Agency. The legal notice was also sent to the transport company as well as to the complainant on 15-07-2006 (Annexure-3). In compliance of the request letter of the complainant dated 02-08-2006, the company sent a detailed statement of accounts dated 12-08-2006 which shows that Rs. 1,17,807.97 is lying dues with the company of the complainant and, a request was made to clear the dues. The complainant assured that all the dues will be cleared as early as possible on telephone (Photocopy of the statement of account has been annexed as Annexure-4).

6. The complainant did not clear the outstanding dues and then on 23-09-2006, the petitioner namely Sushil Kumar Thakur filed a complaint case before the court of learned Chief Judicial Magistrate, Patna being Complaint Case No. 2756 C of 2006 against the transport company and the complainant (Annexure-5). The present case has been filed by the complainant after lapse of two years 9 months against the petitioner with intention to grab the huge amount of the company.

7. The entire cause of action has taken place at



Patna and according to terms and conditions of the company, the legal proceeding will lie at Patna but the present false case has been lodged by the complainant at Bhagalpur to harass the petitioner and to grab the huge dues amount of the company after two years nine months of lodging of complaint by the petitioner against the complainant and the transport company. The petitioner is simply an employee of M/s Galpha Laboratories Ltd and if any case is made out for that the Director of the company is responsible.

8. Counsel for opposite party No. 2 as well as the State has submitted that the court below after looking into the statement of witnesses available on record during inquiry and the materials available in the complaint petition, found prima facie case against the petitioners.

9. The Hon'ble Supreme Court in the judgment reported in **(2009) 8 SCC 751 MOHAMMED IBRAHIM AND OTHERS Versus STATE OF BIHAR AND ANOTHER** has held that there is growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused or to subject the accused to harassment. Criminal courts should



ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if, they also amount to civil disputes.

10. Similar view has been taken by the Hon'ble Supreme Court in the case of ***G. Sagar Suri V. State of U.P. reported in (2000) 2 SCC 636 and in the case of Indian Oil Corporation V. NEPC India Ltd. (2006) 6 SCC 736.***

11. The ingredients required to constitute an offence of cheating are-

(i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived and (iii) in cases covered by (ii)(b) the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.



12. Similarly, the ingredients of criminal breach of trust as stated in Section-405 of the Indian Penal Code are not found in this case on the basis of allegation made in the complaint.

13. It is admitted position that firm of the complainant namely M/S Saurav Medical Agency, Bhagalpur was working as stockist of M/S Galpha Laboratories Ltd. It was supplying the goods to the firm of the complainant on payment by transport. M/s Galpha Laboratories Ltd sent goods to the company of the complainant through Vikas Road ways vide invoice dated 29-02-2006 T.R. dated 06-03-2006 and invoice dated 28-02-2006 T.R. dated 09-02-2006. The company of the complainant M/s Saurav Medical Agency in connivance with the transport company i.e. Vikas Road ways, took the delivery of goods without making payment to the company.

14. The company sent legal notice to the transport company and also to the complainant on 15-07-2006 making request either to make payment or to return the goods. The complainant did not clear the outstanding dues in spite of several request, then on 23-06-2006, the petitioner namely, Sushil Kumar Singh filed complaint case before the learned Chief Judicial Magistrate, Patna vide Complaint Case No. 2756



C of 2006 against the transport company (Vikas Road ways) and the complainant. The complainant lodged the present case after lapse of 2 years 9 months of lodging of case by petitioner.

15. Therefore, this court is of the view that the instant complaint filed by the complainant is purely mala fide with an attempt on his part to give the cloak of a criminal offence to matters which are essentially and purely of civil nature obviously either to pressurize the accused (petitioner) or out of enmity towards the accused or to subject the accused to harassment because petitioner has earlier filed Complaint Case No. 2756C of 2006 against the complainant.

16. Therefore, the impugned order dated 21.11.2009 passed by learned Sub Divisional Judicial Magistrate, Bhagalpur in Complaint Case No. C 1191 of 2009 along with entire criminal proceeding against the petitioner is hereby quashed.

17. This Cr. Misc. Application is accordingly ***allowed***.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	22-6-2017
Uploading Date	03-08-2017
Transmission Date	03-08-2017

