

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.23222 of 2011**

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

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1. Mr. Vivek Khanna, Ht Media Limited, 16th Floor, Hindustan Times House, 18-20, Kasturba Gandhi Marg, Naw Delhi-110001

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. The Sahara India Real Estate Corporation Limited
3. Janardan Singh S/O Sri Dharamdeo Singh Sector Lmanger, Barh, Patna

.... .... Opposite Party/s

with

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**Criminal Miscellaneous No. 8250 of 2012**

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

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1. Khushboo Narayan D/O Jayant Kumar Pandey Staff Reporter Minthi Media Ltd., 16th Floor, 18-20, Kasturba Gandhi Marg, New Delhi.
  2. Raju Narisetti S/O Innain Narisetti Mint Ht Media Ltd., 16th Floor, 18-20, Kasturba Gandhi Marg, New Delhi.
  3. Sukumar Ranganathan @ R. Sukumar S/O C.V.C. Ranganathan Mint Ht Media Ltd., 16th Floor, 18-20, Kasturba Gandhi Marg, New Delhi.
  4. Mr. N. Sundaresha Subramanian S/O N.R. Subramanian Mint Ht Media Ltd., 16th Floor, 18-20, Kasturba Gandhi Marg, New Delhi.

.... .... Petitioner/s

Versus

1. The State Of Bihar.
2. The Sahara India Real Estate Corporation Ltd. Sector Office.
3. Janardan Singh S/O Sri Dharamdeo Singh Sector Manager, Barh, Patna.

.... .... Opposite Party/s

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**Appearance :**

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|--------------------------|---|------------------------------------------------------------------------------------------------------|
| For the Petitioners      | : | Mr. Sanjay Singh, Adv.<br>Mr. Praveen Kumar, Adv.<br>Mr. Dheeraj Kumar Roy, Adv.                     |
| For the Opposite Party/s | : | Mr. U.P. Singh, Sr. Adv.<br>Mr. Ashok Kumar Jha, Adv.<br>Mr. Neeraj Kumar, Adv.<br>Ms. Surabhi, Adv. |
| For the State            | : | Mr. Sunil Kumar Pandey, APP                                                                          |

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

CAV JUDGMENT

**Date: 14-07-2017**

1. Both petitions have been filed for quashing the order dated 03-05-2011 passed by the learned Additional Chief Judicial Magistrate, Barh passed in Complaint Case No. 199 (C) of 2011, by which and whereunder, the learned Magistrate took cognizance against the



petitioners for the offence under Sections-500, 501, 502 of the Indian Penal Code. Since both petitions arise out of the same impugned order passed in the same case, they are being heard and disposed off by this common order.

2. Heard learned counsel appearing for the petitioner and learned counsel for opposite party No. 2. as also learned counsel, appearing for the State.

3. The opposite party Nos. 1 & 2 filed complaint case on 23-04-2011 before Additional Chief Judicial Magistrate, Patna alleging therein that three news items published in newspaper MINT on 08-04-2011, 14-04-2011 and 16-04-2011 were published by the accused persons maliciously and twisting the facts. They published incorrect and misleading news items and the news items were also published on a website called [www.livemint.com](http://www.livemint.com) on 08-04-201, 14-04-2011 and 16-04-2011 which were per se defamatory and scandalous which have caused great prejudice and harm to the business, goodwill and reputation of the company their management and all persons working with the company in the estimation of public at large and right thinking people of the society.

4. The news dated 14-04-2011 is a bundle of false, frivolous and malicious imputations against the complainant company and also twisted as well as misrepresented the order of High Court dated 07-04-2011 with clear intention to defame the complainant-company.

5. Heard learned counsel for the petitioner, opposite party No. 2 and counsel for the State.



6. The petitioner has submitted that MINT is a daily English newspaper which mainly publishes news concerned articles and has limited circulation in the country only limited to metro cities of New Delhi, Mumbai, Kolkata, Chennai, Ahmedabad, Hyderabad, Chandigarh, Pune and Bangalore. It has no circulation in Bihar and least of all in Barh which is a Sub Division of Patna. The complainant-company namely Sahara India Real Estate is one of the group companies of Sahara India Pariwar and has its registered office at Sahara India Bhawan, Lucknow. The office at Barh is one of its business offices, out of the many that they have in the State of Bihar. The allegation of defamation of the Corporation as a person ought to have been instituted in a court in whose jurisdiction, office of the corporation lies or where the cause of action arose. The complainant failed to establish that how the learned Magistrate, Barh has got jurisdiction whereas the newspaper MINT has no publication, printing and/or circulation in the aforesaid area which will be evident from the copy of newspaper MINT relied upon by the complainant itself.

7. The corporation has failed to demonstrate in the complaint petition as how they have suffered the loss of business, name and goodwill at Barh.

8. The three news items which are alleged to be defamatory were fair comments and were not made with malicious and mala fide intention. What was published in MINT was truth and was actuated in making such statement by an intelligent public in public interest with fair mind.



9. The complainant in the complaint petition admits that the Board of complainant No. 1 took a decision to raise its funds from unsecured optional fully convertible debentures by way of private placement to a select class. The action of the complainant company was questioned by SEBI who by order dated 24-11-2010 restrained the complainant company from mobilizing funds through its OFCDs. This order has been challenged by the complainant-company in writ petition No. 11702 of 2010 before the Lucknow Bench of Hon'ble Allahabad High Court. The Hon'ble Allahabad High Court vide its order dated 13-12-2010 stayed the operation of order passed by SEBI on 24-11-2010.

10. It is admitted in the complaint petition itself that on a petition filed by SEBI for vacation of stay order dated 13-12-2010, the Hon'ble Allahabad High Court vacated the stay order vide its order dated 07-04-2011.

11. The newspaper MINT and the website [www.livemint.com](http://www.livemint.com) carried a news stating that the complainant No. 1 continues to raise money from the public defying a Ban of such activity by SEBI which came into force on 07-04-2011.

12. The Hon'ble Allahabad High Court has vacated the stay order. The news item carried a few example of such persons who had made investments and was received by the complainant No. 1 after the stay has been vacated. The complainant admits the facts narrated in the news items and in paragraph-13 of the complaint case, it is stated that there is admission that one investment dated 11-04-2011 relating to Surat based investor is correct.



13. These admissions in the complaint case which have been reported as a fact in the news items would fall within the exception of defamation as defined in Section-499 of the Indian Penal Code.

14. What has been stated in the statement made by witnesses on SA, does not reflect commission of any offence. In fact, the allegation made is apparently absurd and improbable. The prosecution has been made with mala fide and instituted with ulterior motive. The present prosecution is an abuse of the process of the court.

15. Counsel for opposite party No. 2 has submitted that learned Magistrate has only to see the prima facie case at the time of holding inquiry.

16. Counsel for the informant has relied upon a decision reported in *2011(12) SCC 437 (PADAL VENKATA RAMA REDDY ALIAS RAMU Vs. KOVVURI SATYANARAYANA REDDY AND OTHERS)* and has argued that in a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which the complaint does not disclose any offence or is frivolous, vexatious or oppressive. Counsel for informant also relied upon a decision reported in (2013) 1 SCC 44 (FIONA SHRIKHANDE Vs. STATE OF MAHARASHTRA AND ANOTHER) and has argued that during inquiry, the Magistrate has to arrive at prima facie satisfaction as to whether there are grounds for proceeding, by reading the complaint as a whole, without advert to defence of accused, if any, and without going into merits of the case. The Magistrate has to examine prima facie truth and inherent probabilities apparent on



allegations made in complaint so as to be satisfied that prima facie ingredients of alleged offence is made out from complaint for issuance of process-Once Magistrate by exercising his discretion forms opinion regarding existence of ground for proceeding, higher court should not substitute its own discretion for that of Magistrate. Counsel for the informant has also relied upon a decision in the case of **Vinod Raghuvanshi Vs. Ajay Arora** reported in (2013) 10 SCC 581 and has argued that if prima facie case to proceed against accused exists, then complaint not to be quashed.

17. The Hon'ble Supreme Court in a case of *State of Haryana Vs. Bhajanlal & Ors.* reported in 1992 (Supple) 1 SCC 335 has summarized a legal position by laying down the guidelines (paragraph-102) to be followed by the High Court in exercise of the inherent power to quash the criminal proceeding.

(i) 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.

(ii). Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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.

(iii). Where the uncontroverted allegations made in the F.I.R. 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.

(iv) Where, the allegations in the F.I.R. 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.

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

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

(vii) 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.

18. In the instant case, from perusal of all the three news items published in the newspaper MINT on 08-04-2011, 14-04-2011 and 16-04-2011, this court finds that they are narration of facts by which, the action of the complainant-company was questioned by SEBI who by the order dated 24-11-2010 restrained the complainant-company from



mobilizing the funds from different OFCDs. The order of SEBI was challenged by the complainant company in writ petition No. 11702 of 2010 before the Lucknow Bench of Hon'ble Allahabad High Court. The Hon'ble Allahabad High Court vide its order dated 13-12-2010 stayed the operation of order passed by SEBI on 24-11-2010. It is admitted in the complaint case itself that on the petition made by SEBI for vacation of stay order dated 13-12-2010, the Hon'ble Allahabad High Court vacated the stay order vide its order dated 07-04-2011.

19. The newspaper MINT and the website [www.livemint.com](http://www.livemint.com) carried a news saying that the complainant No. 1 continues to raise money from the Public defying a Ban on such activity by SEBI which came back into force on 7<sup>th</sup> April 2011 after Hon'ble Allahabad High Court vacated the stay. The news item carried a few example of such persons who has made investments and was received by the complainant No. 1 after the stay has been vacated. The complainant admits the facts narrated in the news items that one investment dated 11-04-2011 relating to Surat based investor is correct.

20. Section-499 of the IPC lays down that whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

21. In the instant case, 1<sup>st</sup>, 4<sup>th</sup> and 10<sup>th</sup> exceptions are as quoted below:

Ist exception: *Imputation of truth which public good requires to be made or published*: It is not defamation to impute



anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

4<sup>th</sup> Exception: ***Publication of reports of proceedings of Courts***: It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

10<sup>th</sup> Exception: ***Caution intended for good of person to whom conveyed or for public good***:- It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

In this manner, from bare perusal of all those newspaper report, this court finds that those reports were published in good faith for public good to convey a caution for the public good. Some of the news reports were substantially true report of the proceeding of court of justice or of the result of any such proceeding. Therefore, after perusing the contents of the complaint petition and all the three news items in MINT newspaper as mentioned in the complaint petition, this court finds that even if the allegation made in the complaint petition are taken on their face value and accepted in their entirety, prima facie no case is made out against the accused persons. The allegations as made in the complaint petition are fully covered by the exceptions of defamation as defined in Section-499 of the Indian Penal Code.



22. Therefore, the continuance of criminal proceeding against the petitioners will be mere harassment to them and an abuse of process of law.

23. Accordingly, the impugned order dated 03-05-2011 passed by the learned Additional Chief Judicial Magistrate, Barh passed in Complaint Case No. 199 (C) of 2011 along with entire criminal proceeding against the petitioners are hereby quashed.

24. Both petitions are **allowed**.

(Sanjay Priya, J)

A.K.V./-

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