IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1485 of 2012

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

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Md. Imran, S/O Peer Gulam, Proprietor of M/S. Imran and Co. having office at 37/2, Parade Poultry Market (Murga Mandi, Parade), P.S.- Kotwali, Kanpur-208001 (U.P.)

.... Petitioner

Versus

1. The State of Bihar.
2. M/S Amricon Agrovet (Pvt) Ltd. through its A.G.M. (Finance & Accounts), Mr. Ritesh Khare, Surya Apartment,3rd Floor, Fraser Road, P.S.- Gandhi Maidan, Patna-1

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Abhay Shankar Singh, Advocate.

For the O. P. No. 2 : M/S. Shekhar Singh, Brij Bihari Tiwari and Rajeev Kumar, Advocates.

For the State : Mr. N.N. Tiwari, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

Date: 04-05-2017

Heard learned counsels for the petitioner, complainant and learned counsel for the State.

2. The present application has been filed under Section 482 of Cr. P.C. for quashing of the process issued against the petitioner after taking the cognizance for the offence under Sections 420 of the IPC and 138 of the N.I. Act.

3. The prosecution case, in brief, is that the complainant being A.G.M. (F & A) of M/S. Amricon Agrovet(P) Ltd., Patna, has stated that his Company was dealing the supply of poultry feeds to different firms as per their request and need, and upon request of the

accused petitioner, the complainant company started supply of poultry feeds to the petitioner's firm since December, 2008 but the accused petitioner did not pay the outstanding dues which on inspection and audit of books of accounts was allegedly found to the tune of Rs. 11,47,280/- and the same remained outstanding as on that date. Thereafter, for collection of outstanding dues amount, the complainant had sent his representative many times and finally on 17.03.2010 the accused petitioner had issued a cheque vide Cheque No. 717836 for outstanding amount of Rs. 11,47,280/- in favour of the complainant company, which was presented in the HDFC Bank at Patna for clearance but the same was returned unpaid with a remarks that the signature was differing from specimen signature of the drawer and accordingly, the Bank had refused to honour the said cheque vide refusal slip dated 23.03.2010. The complainant had asked the petitioner to ensure payment. It was alleged that the complainant had sent a legal notice dated 06.04.2010 to him through his Advocate by registered post but despite that the accused petitioner did not pay the outstanding amount nor he had responded to the legal notice sent by the complainant company. It makes abundantly clear that the complainant company was induced to supply of poultry feeds and thereafter the cheque was issued with incorrect signature knowing that the cheque will not be honoured and as such he had committed breach of trust. The accused petitioner had an intention to grab the outstanding dues and so, he had purposely issued above mentioned cheque with different signature which has been returned unpaid by the concerned bank. Accordingly, it was alleged that the accused petitioner, was having intention to cheat the complainant, and committed breach of trust, for which the Complaint Case No.1347(C) of 2010 was lodged on 19.05.2010 in the court of learned C.J.M. Patna.

4. It has been submitted on behalf of the petitioner that the present prosecution is an abuse of process of the court. In support of his contention, he has referred to Annexure-2 series which relate to Complaint Case Nos. 2363/2007 and Complaint Case No. 2364/2007. The said complaints were also filed by the complainant for similar offences against the petitioner. Both the complaint cases were directed to be withdrawn with liberty to file afresh complaint case within the territorial jurisdiction of Kanpur in the State of Uttar Pradesh as both the complaints suffered from 'want of jurisdiction'. It is further submitted that after passing of the said order, the complainant filed another Complaint Case No. 1347/2011 for an offence under Section 420 of the I.P.C. and 138 of N.I. Act with a malafide intention. The complainant has abused the process of the court by filing the present complaint case as the earlier two complaint cases filed by the

petitioner were directed to be withdrawn by a co-ordinate Bench of this Court for 'want of jurisdiction'. It is further submitted that the complainant had preferred a quashing application before the Allahabad High Court for quashing of Complaint Case No. 119/2010 filed by the petitioner against the ex-official. The complaint case instituted by the petitioner making an allegation against the complainant that a blank Cheque No. 717836 was given to the complainant and the complainant has misused the said cheque. That very cheque is the subject matter of the present complaint case also. The complainant had succeeded in quashing of the said complaint case which was instituted by the petitioner. The order passed by the Allahabad High Court in application under Section 482 Cr. P.C. being Cr. Misc. Application No. 22168 of 2011 has been placed on behalf of the petitioner. From perusal of the said order, it is apparent that the cheque in question is same.

5. On behalf of learned counsels for the complainant and the State, it is submitted that from bare perusal of the complaint case, it is evident that the prima-facie case is made out for an offence under Section 420 I.P.C and 138 of N.I. Act. The cheque in question has bounced on the presentation of the same and no illegality or irregularity has been committed by the learned court below in taking cognizance for the aforesaid offence and issuance of process against

the petitioner. In the enquiry under Section 202 Cr. P.C. the complainant has supported his case.

6. This application has been filed under Section 482 of the Code of Criminal Procedure, 1973, which envisages three circumstances in which inherent powers can be exercised:

(i) to give effect to any order passed or made under the Code;

(ii) to prevent abuse of the process of any Court; and

(iii) to secure the ends of justice.

Thus the inherent jurisdiction of this Court can be exercised to quash criminal proceedings in an appropriate case either to prevent abuse of process of any Court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person, must be tried under the provisions of the Code, and this Court should be reluctant to interfere with the said proceedings at an interlocutory stage.

7. It is, however, not possible or expedient to lay down any inflexible rule, which would govern the exercise of this inherent jurisdiction but by way of illustrations, some categories of cases, may be indicated, where the inherent jurisdiction can and should be exercised for quashing the criminal proceedings:

> (1)Where the allegations made in the F.I.R. 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 F.I.R 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.

(3)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 case against the accused.

(4)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.

(5)Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent man 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 grievances of the aggrieved party.

(7)Where a criminal proceeding is manifestly accompanied with *malafides*

> and/or where the proceeding is maliciously instituted with an ulterior motive of wreaking vengeance on the accused and with a view to spite him due to personal and private grudge.

8. It is worth quoting, the observations of PANDIAN, J. in State of Haryana Vs Bhajanlal, which lay down the limitations of inherent power of this Court, saved under Section 482 of the Code of Criminal Procedure.

> "The Power of Quashing a Criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the Complaint and that the extraordinary or inherent powers do not confer any arbitrary jurisdiction on the Court to act according to it's whim or Caprice."

9. In my view, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code, in cases where there is no express provision empowering this Court to achieve the said object. The power is discretionary and should be exercised for *ex debito justitiae*. Purpose behind saving of inherent power is that no legislature can foresee all possible contingencies or eventualities that may arise in future and to meet with such situations, inherent power

can be invoked by this Court.

10. While exercising jurisdiction under Section 482, this Court should not assume the role of a trial court and embark upon an enquiry as to the reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence.

11. from the rival contention of the parties, it is apparent that the Cheque in question bearing No. 717836 for an amount of Rs. 11,47,280/- in favour of the complainant's company, issued by the petitioner, returned unpaid vide Bank Memo dated 23.03.2010 as the signature of the petitioner made over the cheque, did not match with the specimen signature and thereafter in spite of service of statutory legal notice, the petitioner did not pay the cheque amount and so far the contention made by the petitioner in his defence, has already been disbelieved by the Allahabad High Court vide order dated 30.08.2012 passed in application under Section 482 No. 22168 of 2011 by which the proceedings of Case No. 1119 of 2010 instituted by the petitioner herein and pleading before the Special Chief Judicial Magistrate, Kanpur Nagar has been quashed. The counsel for the petitioner does not dispute the facts referred above.

12. Considering the aforesaid facts and circumstances, I find no merit in the application. The interim stay granted to the petitioner vide order dated 16.03.2012, stands vacated.

13. Accordingly, the application stands dismissed.

(Sudhir Singh, J)

U.K./-

AFR/NAFR	NAFR
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