

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36266 of 2013

Arising Out of PS.Case No. -2340 Year- 2011 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

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Raman Kumar S/o Ram Ekbal Singh R/O Mohalla Sector 10, B/84, Basundhara,
P.S. + District Gaziabad, Utter Pradesh.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Mahesh Prasad Sah S/O Late Tarni Sah R/O Village Kurma, P.S. Dhoraiya,
District Banka.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Ojha, Advocate

For the Opposite Party/s : Mr. Manoj Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT

Date: 01-09-2017

Heard learned counsel for the parties.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of order dated 12.04.2012 passed by the learned Judicial Magistrate, Bhagalpur in Complaint Case No. 2340 of 2011, whereby the learned court below took cognizance against the petitioner under Sections 406 and 420/34 of the Indian Penal Code.

The brief facts of this case are that the petitioner along with other accused persons was running a company in the name and style of "Success on Line Service System Pvt. Ltd and SOS Earth Developers Ltd." providing employment in all over India and the complainant has deposited a sum of Rs. 88500/- in the account of the said Company and an agreement to that effect has also been executed between them. On suspicion, when the complainant inquired about the matter, the petitioner along with other accused persons abused and assaulted him and also threatened him for dire consequences and when the nearby persons gathered there, the



petitioner and others gave written assurance to return the alleged amount within twenty days, but the petitioner and others failed to return the said amount. Being aggrieved, the complainant reported the matter to the concerned police station and finding it of no help, he filed the instant complaint petition.

Learned counsel for the petitioner has submitted that petitioner has not committed any offence as alleged in the complaint. In fact, the petitioner was one of the Directors in the Company but the petitioner never assured him for providing any employment nor he has convinced him for making any payment in lieu of providing employment even he never meet with the complainant. As a matter of fact, the petitioner himself filed a proposal form for issuance of independent Distributorship and accordingly he was allotted distributorship bearing ID No. 8393240 and started profit sharing business with the company which deals in health related products. Moreover, the company has also given bonus and commission of the total business made by the complainant in his account, which is evident from annexure-2 series. However, the learned Magistrate without considering the aforesaid facts has erroneously taken cognizance under 406 and 420/34 of the Indian Penal Code against the petitioner. Therefore, the order taking cognizance deserves to be quashed.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioner and the court below after going through the materials available on record has found a prima facie case made out against the petitioner and rightly taken cognizance for offence under Sections 406 and 420/34 of the Indian Penal Code. Therefore, the order taking cognizance does not require any interference.

From perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is



made out against the petitioner. All the submissions made at Bar relates to disputed question of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under Section 482 Cr.P.C. Only a prima facie satisfaction of the Court about the existence ground to proceed with the matter is required. At this stage, only prima facie case is to be seen in the light of the law laid down by the Supreme Court in cases of ***R.P. Kapur Vs. State of Punjab, A.I.R. 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192, Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283*** and recently in ***A.R.C.I. Vs. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348***. The submission made by the learned for the petitioner call for adjudication on pure question of fact which may be adequately gone into by the trial court in this case. This Court does not deem it proper, and therefore, cannot be persuaded to have a pre-trial before the actual trial begins. The disputed defense of the accused cannot be considered at this stage. Moreover, the petitioner has got a right of discharge through a proper application for the said purpose and he is free to take all the submission in the said discharge application before the trial court. The prayer for quashing the order taking cognizance is refused.

The application accordingly stands dismissed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	NAFR
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