IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39460 of 2013

Arising Out of PS.Case No. -588 Year- 2012 Thana -PATNA COMPLAINT CASE District-PATNA

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1. Deepak Gulati S/o Late P.L. Gulati, presently posted as Executive President (Mobility), Tata Teleservices Limited having its registered office at 10th Floor, Tower Jewan Bharti, 124, Connaught Circus, P.S. Connaught Place, New Delhi and office at Tata Teleservices Ltd., 2A, Old Ishwar Nagar, Mathura Road, Delhi.

2. Jogesh Nayar S/o Sri Krishan Lal Nayar, at present posted as Senior Vice President (Customer Service) Tata Teleservices Limited having its registered office at 10th Floor, Tower Jewan Bharti, 124, Connaught Circus, P.S.-Connaught Place, New Delhi and office at A-37, Sector-60, Noida (U.P.).

.... Petitioners

Versus

1. The State of Bihar.

2. Sugandha Chaturcedi S/o Dr. Chandan Chatirvedi, 306, Devendra Lok Apartment, P.S.-Kankarbagh, Behind Mahendra Lok Apartment, Patna-800020.

.... Opposite Parties

With

Criminal Miscellaneous No. 40696 of 2013

Arising Out of PS.Case No. -588 Year- 2012 Thana -PATNA COMPLAINT CASE District-PATNA

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1. Ravi Kartha Son of Sri P.N. Gopalkrishnan Kartha, at present Deputy General Manager, Tata Tele Services Limited, P.S.- Srijen Tech Park, DN - 52, Sector - V, Salt Lake City, Kolkata - 700091

2. Aasheesh Verma Son of Sri Yodishatra Verma, at present C-301, Acropolis Mall, Thal Tej, SG Highway, Gujrat

3. Mr. Satyajeet Jha, Son of Late Dr. B.K. Jha, at present - 101, Link Apartments, 18, IP Extension, Patparganj, Delhi

.... Petitioners

Versus

1. The State of Bihar

2. Sugandha Chaturvedi, S/o Dr. Chandan Chatirvedi, 306, Devendra Lok

Apartment, Kankarbagh, Behind Mahendra Lok Apartment, Patna-800020.

.... Opposite Parties

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Appearance :

(In Cr. Misc. No.39460 of 2013 and in Cr. Misc. No.40696 of 2013)

For the Petitioner/s : Mr. Chitranjan Sinha, Senior Advocate
Mr. Ratnakar Pandey, Advocate

For the State : Dr. Mayanand Jha, APP

For the Opposite Paryt no.2: Mr. Ganesh Prasad Singh, Advocate
Mr. Avinash Shekhar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-04-2017

These two applications under Section 482 of the Code of Criminal Procedure have been filed for quashing the entire prosecution of Complaint Case No. 588(C) of 2012 including the order dated 03.10.2012 passed by the learned Judicial Magistrate 1st Class, Patna whereby and whereunder processes have been issued after taking cognizance of the offence punishable under Section 420 of the Indian Penal Code.

2. Heard Mr. Chitranjan Sinha, learned Senior Advocate for the petitioners in both the cases and Mr. Ganesh Prasad Singh, learned counsel for the opposite party no.2.

3. The complainant-opposite party no.2 filed a complaint petition on 01.03.2012 before the Chief Judicial

Magistrate, Patna impleading Mr. Jogesh Nair, National Service Head, Mr. Deepak Gulati, Executive President, Mr. Aasheesh Verma, Chief Operating Officer, Bihar and Jharkhand, Ranbir Kapoor, Brand Ambassador, Irfan Pathan, Brand Ambassador, Yushuf Pathan, Brand Ambassador, Ms. Aditi Roy, Nodal Officer, Ravi Kartha, Appellate Authority, Mr. Satyajeet Jha, Chief Executive Officer, Bihar and Jharkhand and Mr. Rituraj Kumar, Executive Officer, Bihar and Jharkhand of Tata Teleservices Limited, a company incorporated under the Indian Companies Act, 1956. It is alleged in the complaint that the complainant after hearing the name of Tata Teleservices Ltd. joined as customer for getting telecom facility. He opted a scheme namely, 'CMO Nano Family Plan'. According to that scheme, the company was required to provide telephones to its customers and the customers were required to pay the charges. On 18.07.2011, Mr. Aasheesh Verma, Chief Operating Officer, Bihar and Jharkhand wrote a letter to the complainant welcoming him for choosing the company for its services and assured him of the best services by the company. It is alleged that inflated bills of Rs. 1071/- were being sent to the complainant relating to phone nos. 9234006661, 9234006663 and 9234006667. It is alleged that the matter was brought to the notice of the accused Rituraj Kumar, who assured that the bills would be rectified, but said bills were not rectified and on the contrary there was demand for clearing the outstanding dues and ultimately, the services of the connection were stopped.

4. The complainant was examined on solemn affirmation and in course of inquiry altogether four witnesses were examined under Section 202 of the Code of Criminal Procedure (for short 'Cr.P.C.') in support of the complain. On completion of the inquiry, processes were issued under Section 204 of the Cr.P.C. against the petitioners of these cases finding a prima facie case punishable under Section 420 of the Indian Penal Code to be made out against them.

5. It is submitted by the learned counsel for the petitioners that after going through the entire complaint petition, no criminal offence is made out. He submitted that the allegations made in the complaint are attended with mala fide on the part of the complainant. He contended that the nature of dispute made in the complaint between the parties was essentially a civil dispute for which no criminal offence could be launched.

6. On the other hand, learned counsel for the opposite party no.2 submitted that the complainant has supported the allegations made in the complaint in his statement made on oath and the four witnesses examined in course of inquiry have also

supported the allegations made in the complaint. He submitted that the offence of cheating is clearly made out in the present case, as the officials of the company induced the complainant to take the services of the company and once the complainant became their customer, they started sending inflated bills and, in spite of request made to them, they failed to rectify the bills of the complainant.

7. I have heard learned counsel for the parties and perused the record.

8. Section 420 of the Indian Penal Code prescribes punishment for the offence of cheating. The offence of cheating has been defined under Section 415 of the Indian Penal Code, which reads as under:-

> "**415. Cheating**. **-** Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "**cheat**"."

9. From a reading of Section 415 of the Indian Penal Code, it would be evident that in order to constitute an offence of

cheating, intention to deceive should be in existence at the very inception when inducement was made. There is no averment in the present complaint that the accused persons had fraudulent or dishonest intention from the very beginning. There is also no averment in the complaint that these petitioners who are high officials of the company had ever induced the complainant in any manner to be a customer of the company or they were responsible for doing any day-to-day business of the company at the local level at Patna.

10. So far as the offence of cheating is concerned, the Hon'ble Supreme Court in **Sukhdeo Jha Utpal** vs. **State of Bihar [AIR 1957 SC 466]** observed: "*on charge of cheating, the fact that the accused made a false representation with the knowledge that it was false and he had a dishonest intention to induce the person to deceive to part with his property, at the very time when he made a false representation, is an essential ingredient of the offence. On such a charge, the burden lies on the prosecution to prove affirmatively not only that the accused has made a false representation, but also he made it with dishonest intention, knowing that the representation which he was making was false*".

11. In **S.W. Palanitkar and Ors.** vs. **State of Bihar and Anr. [(2002) 1 SCC 241**], the Hon'ble Supreme Court further

held : *"...In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating*".

12. In the present case, there is nothing on record to show that the petitioners made any false representation, much less dishonestly or fraudulently. Thus, one of the most essential ingredients of Section 415 or 420 of the Indian Penal Code is not attracted at all.

13. There are catena of judgments of the Supreme Court which laid down that a civil dispute cannot be converted into criminal dispute with a view to bring pressure on the accused persons.

14. In **M/s. Indian Oil Corporation** vs. **M/s. NEPC India Ltd. and Ors. [AIR 2006 SC 2780]**, the Hon'ble Supreme Court has held : "*a growing tendency in business circles to convert purely civil disputes into criminal cases is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to*

irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged".

15. In the said case, the Hon'ble Supreme Court deprecating harassment of innocent parties in criminal proceedings launched with ulterior motive, further held "*While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant".*

16. In the opinion of this Court, it was a fit case in which the court below ought to have exercised its power under

Section 250 of the Cr.P.C. while dismissing the complaint under Section 203 of the Cr.P.C. as the very filing of the complaint was a gross abuse of the process of law, inasmuch as a civil dispute was sought to be converted into a criminal dispute with ulterior motive.

17. For the reasons stated above, in exercise of the powers under Section 482 of the CrPC, I hereby quash the Complaint Case No. 588(C) of 2012.

18. These applications stand allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.04.2017
Transmission Date	19.04.2017