

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51716 of 2013

Arising Out of PS.Case No. -1509 Year- 2009 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

- =====
1. Ravi Khilani (Director), M/S Lumbini Beverage Pvt Ltd., H-2, Epip, Industrial Area, Hajipur (Vaishali)
 2. U.N. Singh (Tdm), M/S Lumbini Beverage Pvt. Ltd., H-2, Epip Industrial Area, Hajipur (Vaishali)

.... Petitioner/s

Versus

1. The State of Bihar
2. Mohan Lal Gupta S/O Late Bhola Ram Managing Proprietor Sri Laxmi Agency, Hanuman Bhawan, Meerganj, P.O & P.S- Meerganj, District- Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nilanjay Chatterjee, Advocate
Mr. Abhimanyu Vatsa, Advocate
Mr. Sudhanshu Trivedi, Advocate
For the Opposite Party/s : Mr. Rajendra Singh Shastri, APP

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 25-05-2017

Heard learned counsel for the petitioner and learned APP
for the State.

Notices were issued to opposite party no. 2 and as per
service report, opposite party no. 2 has died and notices were received
by his son Raj Kumar Gupta, but he has chosen not to appear.

Petitioners under Section 482 of the Code of Criminal
Procedure (hereinafter referred to as the Cr.P.C.) seek quashing of the
order dated 09.05.2011, passed by Sri A. K. Mall, learned Judicial
Magistrate, 1st Class, Gopalganj in Complaint Case No. C-1590/2009
whereby cognizance for the offence punishable under Sections 402,



417 of the Indian Penal Code has been taken while issuing summons and processes to the petitioners.

The facts of the case is that the complainant/opposite party no. 2 filed a complaint case before the learned Chief Judicial Magistrate, Gopalganj being Complaint Case No. C-1509/2009 wherein he alleged that opposite party no. 2 was the proprietor of Laxmi Agency situated at Hanuman Bhawan, Mirganj and was having business relationship with one Lumbini Beverage Private Ltd. During business it is alleged that an amount of Rs. 8,01,000/- in the account has not been reconciled of security deposit for non-supply of Pepsi and security of empty bottles of Pepsi. It is also alleged that time and again the complainant asked for re-conciling the account but the petitioners being the Directors of M/s Lumbini Beverages, Hajipur, Vaishali failed to do so, hence, a complaint case was lodged on 30.06.2009 under Sections 406, 420, 504 of the Indian Penal Code but the learned Magistrate has taken cognizance only under Section 402 and 417 of the Indian Penal Code.

It has been submitted by the learned counsel for the petitioners that the petitioners are Directors of M/s Lumbini Beverage but Lumbni Beverage is a Company and has an independent entity but the complaint has not been made against the Company but only against the petitioners who are the Directors of the said Company. He



submits that the matter is purely a money dispute and is of civil nature. He relies on a judgment in the case of **Inder Mohan Goswami and another Vs. State of Uttaranchal and others**, since reported in (2007) 12 SCC 1 with special reference to paragraph 22, which is quoted hereinbelow.

“The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and respondent no. 3 has already instituted a civil suit in the Court of the Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court.”

He further submits that the matter being purely a civil dispute for which common law remedy would have been the proper remedy instead initiating criminal proceeding by the complainant against the petitioners, is clearly an abuse of the process of the Court.

However, learned APP for the State submits that a prima facie case under Sections 402 and 417 of the Indian Penal Code is made out against the petitioners, hence, the order of cognizance dated 09.05.2011 calls for no interference.

Considering the rival submissions of the parties as also the case of Inder Mohan Goswami (supra) the inherent power under Section 482 Cr.P.C. to act *ex debito justitiae*, further proceedings to continue would be an abuse of the process of the Court.



In the result, order of cognizance dated 09.05.2011, passed by Sri A.K. Mal, learned Judicial Magistrate, 1st Class, Gopalganj in Complaint Case No. C-1509/2009 and the entire criminal proceedings in connection with the aforesaid complaint is hereby quashed.

This application is allowed.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.05.2017
Transmission Date	25.05.2017

