IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.54106 of 2013

Arising Out of PS.Case No. -1000 Year- 2012 Thana -BHABHU(KAIMUR) COMPLAIN C District- BHABHUA (KAIMUR)

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Mahesh Bahadur Singh, s/o Dhir Bahadur Singh, resident of Flat No.1105-B, Wing, Dattani Shelters, Oshiwara Bus Depot Lane, P.S- Oshiwara, Mumbai.

.... Petitioner/s

Versus

1. The State of Bihar
2. Diwan Akil Khan, s/o late Farookh Ahmad Khan, resident of village- Naughara, P.S- Chainpur, District- Kaimur.

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Shailesh Kumar Sharma, Advocate
For the Opposite Party No.1: Mr. Sunil Kumar Pandey, APP
For the Opposite Party No.2: Mr. Ahtasham Ali Khan, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
CAV JUDGMENT
Date: 22-05-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 15.03.2013 passed by the Chief Judicial Magistrate, Bhabhua, Kaimur, in Complaint Case No.1000 of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner and others for the offence under Section(s) 406 and 420 Indian Penal Code.

2. Prosecution case as per the Complaint Petition, in brief, is that the accused persons including the petitioner were known to the complainant. They came to the house of the complainant and made request to give him rupees fifty lacs as they have opened one institution in the name of *Fine Indisales Pvt. Ltd.* They told the complainant that they require rupees fifty lacs for the aforesaid institution and they will return the money within six months. The complainant gave rupees fifty lacs to the accused on 06.01.2012. After six months, the complainant made demand. The accused persons gave two cheques dated 08.06.2012 for rupees twenty five lacs each drawn on ICICI Bank, Kanpur Branch. The complainant deposited both the cheques in his account in the State Bank of India, Chainpur. The complainant learnt on 16.07.2012 that both cheques have bounced because there was no fund in the account of the accused persons. The complainant went to enquire from the accused persons then they refused to return money. They also said that there is no proof of making payment of the aforesaid amount by the complainant to the accused persons. It has been alleged that intention of the accused was bad from very beginning.

3. During enquiry, complainant was examined on Solemn Affirmation. Besides complainant, two other witnesses were also examined, namely, Diwan Islam Khan (EW 1) and Babar Khan (EW 2). The learned Magistrate after holding enquiry has found *prima facie* case against this petitioner and others for the offence under Section(s) 406 and 420 Indian Penal Code. As per the complaint, this petitioner was Director of the aforesaid company.

Xerox copy of the two cheques, which were bounced, dated 08.06.2012, has been annexed as Annexure-6 series. It is mentioned in the Return Memo of the bank that fund was insufficient and the account had been frozen.

4. Heard learned counsel for the Petitioner and the State as well as counsel for the Opposite Party No.2.

5. It has been submitted on behalf of the petitioner that there is no proof of making payment of rupees fifty lacs by the complainant to the accused.

6. Learned counsel for the petitioner has further argued that prosecution against Director or authorized signatory of the cheque without arraying the company as an accused is not maintainable. He has relied on the judgments of the Hon'ble Supreme Court in the case of ***Aneeta Hada Vs. Godfather Travels & Tour (P) Ltd.*** reported in ***(2012) 5 Supreme Court Cases 661*** as well as in the case of ***Sunil Bharti Mittal Vs. Central Bureau of Investigation*** reported in ***(2015) 4 Supreme Court Cases 609*** in support of his submission. Learned counsel for the petitioner after relying on the judgment in the case of ***Sunil Bharti Mittal Vs. Central Bureau of Investigation*** (supra) has argued that the Magistrate issuing process under Section 204 Cr. P. C. against the Director without ascribing any incriminating role to him, but solely on the basis that their companies were accused and they being the alter ego were vicariously liable without invoking any applicable statutory scheme regarding vicarious liability is unsustainable. Freedom of Magistrate is, however, to exercise power under Section 319 Cr. P. C., if warranted by the facts.

7. Similarly, counsel for the petitioner has relied on the decision of the Supreme Court in the case of ***Harshendra Kumar D. Vs. Rebatilata Koley*** reported in ***(2011) 3 Supreme Court Cases 351*** and has argued that ex-Director cannot be made accountable and fastened with liability for anything done by company after accepting his resignation by the company.

8. Counsel for the State has submitted that there is no illegality in the impugned order. The Magistrate is only required to see *prima facie* case at the time of enquiry under Section 202 Cr. P. C.

9. Having heard both the parties and from perusal of the allegation in the Complaint Petition, it appears that Complaint Petition has been filed by the complainant against this petitioner and other accused persons making specific allegation that they came to the complainant and requested them to pay rupees fifty lacs for opening the institution with name *Fine Indisales Pvt. Ltd.* The complainant paid the aforesaid amount on 06.01.2012 to the accused because they were known to him from before and on assurance of the accused persons that they will return the money within six months, but the accused persons did not return the money within six months. On demand by the complainant, they gave two cheques dated 08.06.2012 to the complainant for rupees twenty five lacs each. The complainant deposited those cheques in his account in State Bank of India. The informant learnt on 16.07.2012 in his bank that there is no fund in the account of which cheques have been given by the accused persons.

10. Xerox copy of the cheques, which were given by the accused persons to the complainant, has been annexed as Annexure-6 series.

11. The petitioner and other accused persons have approached the complainant in individual capacity for demand of money to open the institution, namely, *Fine Indisales Pvt. Ltd.* and the complainant paid the money to the accused persons in their individual capacity for opening the aforesaid institution on promise that they will return the money within six months, but money was not returned and on demand the accused persons gave two cheques to the complainant for rupees twenty five lacs each, which bounced as no fund was available in the account on which cheques were issued by the accused persons. In the case of ***Aneeta Hada Vs.***

Godfather Travels & Tour (P) Ltd. (supra) relied by the counsel for the petitioner, the cheque, which got bounced, was issued by the Company and the main allegation was levelled against the Company. In the instant case, from the Complaint Petition itself, it appears that prior to formation of the Company, this petitioner and others approached the complainant, and on their request the complainant paid rupees fifty lacs to them on promise to return the money within six months and on demand the accused persons gave the complainant two chequs dated 08.06.2012 of rupees twenty five lacs each, which got bounced. Therefore, this Court is of the view that the facts and circumstances of the case relied upon by the petitioner are totally different from the facts and circumstances of this case.

12. The Hon'ble Supreme Court in the case of ***State of Bihar Vs. Rajendra Agrawalla*** reported in ***(1996) 8 Supreme Court Cases 164*** has held that inherent power of the Court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court, if such power is not exercised. At that stage, it is not open for the Court either to sift the evidence or appreciate the evidence and come to the conclusion that no *prima* *facie* case is made out.

13. Similarly, in another decision in the case of ***Chief Enforcement Officer Vs. Videocon International Ltd.*** reported in ***(2008) 2 Supreme Court Cases 492,*** it has been held that object and scope of enquiry under Section 202 Cr. P. C. is to ascertain whether there is *prima facie* case against the accused. At that stage, the Magistrate examines whether there is sufficient ground for proceeding with the matter and not whether there is sufficient ground for conviction.

14. In the instant case, from perusal of the impugned order as well as allegation made in the Complaint Petition, this Court finds that the learned Magistrate after looking into the allegation in the Complaint Petition as well as Solemn Affirmation of the complainant, statement of the two witnesses recorded during enquiry has found that all the witnesses have supported the allegation that the accused persons named in the Complaint Petition had taken rupees fifty lacs with intention of cheating, and, accordingly, found *prima facie* case is made out against the petitioner and other accused persons for the offence under Section(s) 406 and 420 Indian Penal Code.

15. Therefore, this Court does not find any illegality in the impugned order dated 15.03.2013 passed by the Chief Judicial

Magistrate, Bhabhua, Kaimur, in Complaint Case No.1000 of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner and others for the offence under Section(s) 406 and 420 Indian Penal Code.

16. Accordingly, the application is dismissed.

17. The petitioner is, however, given liberty to raise all the points, as raised in the instant application, at the appropriate stage of framing of charge in the Court below, which shall be considered and disposed off by the learned Court below in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	**AFR**
CAV DATE	**08-05-2017**
Uploading Date	**27-05-2017**
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