

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21628 of 2014

Arising Out of PS.Case No. -1448 Year- 2008 Thana -SAMASTIPUR COMPLAINT CASE
District- SAMASTIPUR

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Siddharth Kishore Singh @ Dipu Singh @ Siddhart Kishor @ Sidharth Kishor

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar, Advocate.
For the O Party No.2 : Mr.S.K.Thakur, Advocate.
For the State of Bihar : Mr. Navin Kumar Pandey(App)

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 28-06-2017 Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor for the State.

2. The complaint has been filed by the complainant alleging that upon inducement from the accused persons he had stored 696 bags of potatoes with the Cold Storage (Licensee) . Further allegation is that only 125 bags were returned to the complainant and that also was rotten. He has thereafter alleged that he approached the accused persons who is the Managing Director of Cold Storage (Licensee) for recovery of loss suffered on account of loss of the potatoes, which has been denied.

3. Very sketchy kind of complaint has been filed wherein vague and bald allegation is made, that upon getting general information from other sources, that the accused is in the



habit of indulging in such activity and selling off potatoes of farmers for his own advantage, he had lodged the complaint which is subject matter of this petition.

4. Initially the application had been filed for quashing the order dated 16.11.2013 passed by the Magistrate whereby the petitioner's prayer for discharge under Section 245 Cr.P.C. had been rejected vide order dated 16.11.2013, relying on the statement of witnesses recorded in support of the allegations made in the complaint.

5. One I.A. No.469 of 2015, making a prayer for hearing of the case out of turn was filed, wherein the order sheet of the proceedings from the court of Judicial Magistrate, 2nd Class, Samastipur, was also placed on record.

6. On 09.04.2015 supplementary affidavit was filed on behalf of the petitioner submitting therein that charges have been framed during pendency of the instant case. The order dated 24.03.2015 framing charge under Sections 406 & 323 of I.P.C. were brought on record.

7. After taking the supplementary affidavit on record, this Court had issued notices upon opposite party No.2, i.e. the complainant.

8. The complainant/opposite party no.2, has appeared



but has not filed any affidavit.

9. From bare perusal of a complaint petition it is obvious that on the basis of the uncontroverted allegations ingredients of offence under Section 323 of the I.P.C. has not been made out. There is no allegation that the accused persons intended to, or voluntarily caused hurt. In fact there is no allegation of the accused having caused any injury whatsoever.

10. Thus, uncontroverted allegations made in the complaint make out a case of loss suffered by the complainant arising out of a normal transaction of storing potatoes in a cold storage. Subsequent rotting of the potatoes/ failure on the part of the accused to keep up his promise of return of the amount of loss suffered, without any allegation of fraudulent misappropriation may give rise to a breach of trust involving a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court. Only if the breach of trust is with mens rea, that it gives rise to a criminal prosecution as well.

In this connection the legal position stated by the Hon'ble Apex Court in the case of S.W. Palanitkar vrs. State of Bihar (2002) 1 SCC 241 may be referred:-

“8.Before examining respective contentions on their relative merits, we think it is appropriate to notice the legal position. Every breach of trust may not result in a penal offence of criminal breach of trust



unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well.”

“9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.”

In the instant case there is no allegation in the complaint petition that the accused has misappropriated, or that there is some actual user by the accused of the potatoes which is in violation of any contract of law, or that the same was accompanied with any dishonest intention. From bare perusal of the uncontroverted allegations made in the complaint petition it is thus apparent that the allegation under Section 406 of the Indian Penal Code also cannot be made out.

11. Submission is made on behalf of the accused person (petitioner) that under the provision of the Bihar State Regulation of Cold Storage Act, 1992 (hereinafter referred to as ‘the Act) the complainant has remedy to obtain compensation for



every loss, if suffered by him due to negligence, misconduct or default on the part of the Cold Storage (Licensee). He has further drawn the attention of this Court to the provision in the Act regarding amount of compensation payable to be recovered as arrears of land revenue. The relevant provision in this regard are Sections 24 and 25 of the Act, which are reproduced hereinbelow:-

“24. Compensation for loss, destruction, etc.-

Except as otherwise provided in this Act the licensee shall be liable to pay to the hirer, compensation for every loss, destruction, damage, deterioration or non-delivery of the goods in his cold storage caused by negligence, misconduct or default on the part of such licensee.

25. Dispute regarding compensation to be referred to the Licensing Officer :-

- (1) Every dispute regarding compensation payable by the licensee under Section 24 shall be referred to the Licensing Officer, and subject to the result of appeal, if any, under Section 36, the order of the Licensing Officer shall be final.
- (2) When the Licensing Officer is satisfied that any compensation payable by a licensee under sub-section (1) has not been paid within thirty days from the date of the order under sub-section (1) or, as the case may be, from the date of the decision of the Tribunal under Section 36, he shall issue a certificate of recovery to the Collector, and the Collector shall recover the amount of such compensation together with cost of



recovery as arrears of land revenue and pay the amount realised after deduction of costs to the hirer.”

12. For licensing, supervision and control over cold storage and for matters connected therewith, the State of Bihar has enacted the said “the Act”. Keeping in view the disputes and claims for loss/compensation arising in the due course of the business of cold storages, the aforesaid provisions have provided redressal. The said provisions have not been noted to suggest that the same provide an effective substitute for a criminal prosecution, if and when the disputed act constitutes a criminal offences.

13. In the instant case from the uncontroverted allegations made in the complaint and the evidence, being the statement of some witnesses in support of the same, do not disclose the commission of any offence under Sections 323 and 406 of I.P.C. The instant case appears to be predominantly civil in nature covered under the Act for which adequate remedy is provided, which the complainant may avail of for quantification and for recovering compensation for the alleged loss.

14. Resort to criminal proceedings and trying to give such commercial disputes the cloak of criminal proceedings have been deprecated time and again by the Hon’ble Apex



Court. In this connection reference may be made in paragraph 8 of the case of G.Sagar Suri vs. State of U.P. reported in (2000) 2 SCC 636 wherein the Hon'ble Supreme Court has observed:

“8.It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

15. Learned counsel for the petitioner also draws the attention of the Court to that Section 43 of the said Act, which is as follows:-

“43. Overriding effect of the Act:-

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having the effect of law.”

16. The effect of the said provisions need not be



decided in the instant case since this Court has already concluded that the on basis of the uncontroverted allegations made in the complaint no case has been made out for invoking the criminal process.

17. Thus, the trial court has erred in rejecting the petitioner's application for discharge under Section 245 Cr.P.C. in the light of the findings discussed in the foregoing paragraphs. Since, the ingredients of offences under Sections 406 & 323 I.P.C. have not been made out on uncontroverted allegations made in the complaint petition, then the fact that the same allegations have been supported by the witnesses can by no stretch of imagination be sufficient to presume that the accused has committed an offence triable.

18. The situation might have been different if any new evidence had been brought by the complainant, which has not been done at the stage of taking evidence under Section 244 Cr.P.C., as would be evident from the copy of proceedings of the trial court, brought on record by the said I.A. No.469 of 2015 and the supplementary affidavit.

Thus, even at this stage no case whatsoever has been made out against the accused which, if unrebutted, would



raise a presumption of his conviction at trial. Thus, this is a fit case to conclude that continuance of the proceedings would serve no useful purpose and would be an abuse of the process of the court. Interest of justice would be served by relieving the petitioner from such criminal proceedings. Continuance of the same would result only in harassment to the petitioner.

19. The petition is allowed, and the entire proceedings arising out of Complaint Case No.1448 of 2008/ T.R. No.2618 of 2013 pending in the court of Judicial Magistrate, Samastipur, are hereby quashed.

(Madhuresh Prasad, J)

AnilKrSinha/-

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