IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31234 of 2011

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1. Gyan Prakash Kaushik, son of late Shyam Sunder Kaushik, Junior Engineer of M/s Punjab Tractor Ltd. Now known as Mahindra & Mahindra Limited, FES, Swaraj Division, having office at House No.387, Ved Nagar Rukunpura, Bailey Road, Patna-800 014 (Bihar) &
2. Gautam Khajuria, son of Shri Satya Devi Khajuria, Deputy General Manager (DGM) M/s Punjab Tractor Ltd. Now known as Mahindra & Mahindra Limited, FES, Swaraj Division, having office at House No.387, Ved Nagar Rukunpura, Bailey Road, Patna- 800 014.

.... Petitioners

Versus

1. The State of Bihar &
2. Kamta Prasad, son of late Mohan Lal Nayak, Mohalla-Bardman Hata, near Arjun Bhawan, Purnia, P.S. K.Hat, District-Purnia-854301.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Akhileshwar Prasad Singh, Sr. Advocate
For the Opposite Party No.2	:	Mr. Kamal Kant Upadhyay, Advocate
For the State	:	Mr. Kumar Ranjeet Ranjan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 05-09-2017

This criminal miscellaneous application under Section 482 of the Cr.P.C. has been filed to quash the order dated 20.12.2010 passed by learned Chief Judicial Magistrate, Purnia in Complaint Case No.2852 of 2010 whereby and whereunder the learned Magistrate in prima-facie case for the offence under Sections 385/34 of the IPC summoned the petitioners.

2. Heard and perused the record.

3. The Opposite Party No.2 filed the aforesaid complaint case on the file of CJM alleging inter-alia that these petitioners are Junior Engineer and Deputy General Manager of

M/S Mahindra & Mahindra Limited (FES), Swaraj Division and in course of business of tractor they used to visit, Purnia and stay at hotel and some times in the office-cum-guest room of the business premises of the complainant. The complainant had kept some cheques duly signed by him in the business premises for the business purpose. The said cheques were found to lost and on enquiry he came to know that on 29.11.2003 and 23.01.2004, the petitioners were seen handling some cheques and paper kept in the office of the complainant. The petitioners misused the said cheques for which complainant filed Miscellaneous Petition No.64 of 2010 before the court of learned CJM, Purnia on 12.01.2010. The complainant has further alleged that these petitioners in conspiracy with each other committed theft of the cheque book and used the same by committing fraud and forgery. They demanded Rangdari from him to the tune of Rs.10,00000/-. The complainant on solemn affirmation and some other witnesses supported the case and the court below finding prima-facie case has ordered for issuance of summons.

4. Learned counsel for the petitioners submits that their firm M/S Punjab Tractors Ltd. was engaged in the business of manufacturing and sale of Swaraj brand Tractor, Forklifts, Harvester Combines etc. The said company amalgamated/merged with the M/s. Mahindra & Mahindra Ltd. which was approved by the Hon'ble Punjab & Haryana High Court and Hon'ble Mumbai High Court. The firm M/s National Sales Corporation Purnia as dealer of erstwhile company was selling products of the Company in the territory allotted to the complainant. The said firm was partnership business of the complainant and three others. The complainant Opposite Party No.2 was carrying the business of sale/purchase of tractors and its spare parts under the name and style M/s National Sales Corporation, Purnia. As partners all of them were managing the day to day affairs of the firm and so all the partners are responsible to the act of the firm. In course of business transaction an amount to the tune of Rs.2,01,98,469/- fell due against the Opposite Party No.2 which was confirmed by the Opposite Party No.2 on 31.01.2008 as per letter of confirmation. The complainant in discharge of liability of the Firm issued four cheques of Punjab National Bank, Purnia in favour of the Punjab Tractors. Out of the aforesaid four cheques, the petitioners deposited two cheques bearing no.991775 dated 30.04.2010 for an amount of Rs.97,50,000/- and cheque no.923449 dated 02.07.2010 for Rs.42,50,000/- in Overseas Bank, PTL Brach Mohali on 13.07.2010 for getting its proceeds. The said cheques were sent to Punjab National Bank, Purnia for clearance but were not received back by Indian Overseas Bank, Mohali. The said bank at Mohali has taken action against the Punjab National Bank, Purnia. The petitioners company in order to recover the outstanding dues deposited remaining two cheques bearing cheque no.923450 dated 26.10.2010 for Rs.57.50 lakh and cheque no.923451 dated 01.02.2011 for Rs.42,52,415/-. These two cheques were presented to Indian Overseas Bank, PTL Brach, Mohali on 11.02.2011. The said cheques were sent to the Punjab National Bank, Purnia but the Bank returned both the cheques vide memo dated 15.03.2011 with an endorsement that cheques reported were lost by the drawer. The petitioners gave legal notice under registered post on 24.12.2010 to the firm including the complainant and called upon the complainant to pay the amount of the said dishonoured cheques within the statutory period of 15 days. The complainant Opposite Party did not pay the amount and therefore the petitioners company M/s Mahindra and Mahindra Limited filed Complaint Case No.15 of 2011 before the Sub Divisional Judicial Magistrate, Mohali, Punjab. In the said case, the complainant has been summoned. The petitioners' company issued another legal notice under registered cover on 17.03.2011 with respect to another two dishonoured cheques but in spite of service of notice, the complainant did not pay the amount in question and so the petitioners company filed second Complaint Case No.52 of 2011 before the CJM, Mohali, Punjab on 11.04.2011. In the said case also, the petitioners have been summoned. The complainant Opposite Party No.2 and others have already appeared in the said two cases and filed an application under Section 205 of the Cr.P.C. The complainant suppressing all these facts has filed the present complaint case with false and frivolous allegation. The petitioner no.1 was not present in India on the alleged date of occurrence. The petitioner no.1 had left India on 06.08.2010 for United Arab Emirat and he came back Delhi on 09.08.2010. The petitioner no.2 was at Varanasi, Utter Pradesh on 07.08.2010 and came back in their company on 09.08.2010. The learned counsel in support of his contention has filed photo copy of passport and the copy of Air Tickets. The complainant maliciously has filed the complaint case only to put pressure on the petitioners in order to grab the outstanding dues of the petitioners company. The Magistrate has passed the impugned order in mechanical manner without applying judicial mind and so the impugned order is fit to be quashed.

5. Learned counsel for the Opposite Party No.2 as well as learned APP opposed the submissions.

6. On perusal of complaint petition and the annexures enclosed with this application, I find that the Opposite Party No.2

was running a partnership business in the name of M/s National Sales Corporation, Swaraj Tractors. The petitioners are Area Manager and Regional Manager of M/s Mahindra and Mahindra Limited. It has been asserted that an amount of Rs.2,01,98,469/- fell due against the complainant. From annexure-3 of this application, it appears that the complainant has confirmed the said outstanding dues as per letter dated 31.01.2008. The complainant Opposite Party No.2 has not denied the genuineness of this document but adverted that the said outstanding dues relate to year 2008. There is nothing on record to show that the said outstanding dues has been clearned by paying the said amount to the company of the petitioners. The petitioners gave legal notice to the Opposite Party No.2 as regards dishonour of cheques which were given by Opposite Party No.2 in favour of the company of the petitioners. The said two cheques were presented in bank and legal notices were given to the Opposite Party No.2 much earlier to the filing of the complaint case by Opposite Party No.2. The petitioners company have filed two complaint cases against the Opposite Party No.2 with respect to four cheques issued by him. The said two cases are still pending at Mohali (Punjab).

7. In the case of Eicher Tractor Ltd. & Others Vs.Harihar Singh reported in (2008) 16 S.C.C. 763, I find that in the said case the appellant after issuing a legal notice, filed complaint case against the respondent. The lower court finding prima facie case for the offence U/s 138/142, 141 of N.I. Act, ordered for issuance of summons against the respondent. Subsequent to the said case, respondent filed complaint case no. 1343 of 2004 alleging therein that the appellant had stolen the cheques and after making forgery and interpolation, presented the same in Bank and thus committed an offence punishable under Sections 468 and 471 of the Indian Penal Code. The Magistrate took cognizance on 08.02.2005. The cognizance order was challenged before Hon'ble Allahabad High Court under Section 482 of Cr.P.C. which after hearing was dismissed. The matter went to Apex Court where it was allowed and proceeding against the appellant was quashed holding that the said case squarely covered within the parameters indicated in category (7) of Bhajan Lal case (1999 Supp (1) S.C.C. 335).

8. The principles relating to exercise of jurisdiction under section 482 of the Cr.P.C. to quash the complaint and criminal prosecution have been considered by the Apex Court in several decision. In State of Haryana and others vs. Bhajan Lal and others [1992 Supp (1) SCC 335] certain parameters have been pointed out in paragraph 102 by the Supreme Court under which prosecution launched in a complaint or FIR may be quashed in exercise of jurisdiction under section 482 of the Cr.P.C.. It reads as under :-

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. On perusal of complaint petition, impugned order and annexures enclosed with this application, I find that these petitioners are Area Manager and Regional Manager of Mahindra and Mahindra Ltd. These petitioners had filed a Complaint Case No. 15 of 2011 and Complaint Case No.52 of 2011 against the opposite party no. 2 for the offence under Section 138 of the Negotiable Instrument Act. The present case filed by the opposite party no.2 appears to be filed with ulterior motive. The facts of the present case is quite similar to the case decided by the Apex Court in Eicher Tractor Ltd. & Others Vs. Harihar Singh (supra) and also squarely covered by guidelines given by Apex Court at para 102 of State of Haryana and others vs. Bhajan Lal and others case (supra)."

10. Therefore in view of principles laid down by the Supreme Court as discussed above, the order dated 20.12.2010 passed in Complaint Case No. 2852 of 2010 as well as the criminal prosecution of these petitioners is hereby quashed. This application is, accordingly, allowed.

B.Kr./-

(Sanjay Kumar, J)

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	12.09.2017
Transmission Date	12.09.2017