

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28722 of 2013

Arising Out of Complaint Case No. -153 (C) Year- 2013 Thana -Teghara District- BEGUSARAI

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1. B. Venkat Suresh Kumar S/o Sri B V S Prasad Rao,
 2. D B P Kiran S/o Sri D N Murthiy,
 3. F D Jangali S/o Sri Durgappa Jangali,
All R/o Larsen & Toubro Limited, C/o UTCL Rajashree Cement Project
Malkhed Road, Gulbarga, District- Gulbarga, Karnataka.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sushil Kumar Mishra S/o Shiv Kumar Mishra, resident of Daniyalpur Teghara,
P.S.- Teghara, District- Begusarai.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Advocate
For the O.P. No. 2 : Mr. Manoj Kumar, Advocate
For the State : Mr. H.Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 14-09-2017

1. Heard the parties and perused the record.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure, has been filed to quash the order dated 1st March 2013 passed by the learned Judicial Magistrate 1st Class, Begusarai in Complaint Case No. 153(C)/2013 whereby and whereunder the cognizance for the offences under sections 420 and 409/34 of the Indian Penal Code, was taken and the petitioners were summoned.

3. The opposite party no. 2 filed a Complaint Case



No.153(C)/2013 on the file of learned Chief Judicial Magistrate, Bugusarai alleging *inter alia* that the complainant is a partner of M/s M. B. Construction Company having its office at Daniapur, Teghara, Begusarai. His company was working with the petitioners' company in different projects. The complainant entered into agreement with the petitioners and agreed to send labourers for working on wages at the rate of Rs. 275/- per day for the skilled labourer and Rs.225/- per day for helper and the complainant was to get 15% of the profit. The petitioners had written the terms and conditions of their agreement on a letter pad of the complainant. The complainant provided labourers from 19.01.2012 to 07.04.2012, who worked at Rajshree R C Project Malkhere. After completion of work, the account was finalized and an amount of Rs.29,42,948/- fell dues towards wages but in spite of repeated request and demand, the petitioners did not pay an amount of Rs.19,45,048/-. The petitioners have, thus, cheated the complainant and also committed breach of trust. It has been submitted on behalf of the petitioners that the dispute between the parties is purely a civil dispute arising out of contract. The allegation made in the complaint petition even if accepted as true, no offence under sections 420 and 409/34 of the Indian Penal Code is made out. It has been further submitted that the complainant had filed the Complaint Case No. 1079C of 2016 against the petitioners with similar nature of allegation.



In the said case, the petitioner had filed a discharge petition, which was rejected by the Trial Court. Against the said order, the petitioners filed criminal Revision no. 697 of 2017 before this Court, which after hearing, was allowed on 14.07.2017 and the order of the Court below was set aside. The Court below has passed the order without applying judicial mind and so, the impugned order is fit to be quashed.

4. The learned counsel for the opposite party on the other hand opposed the submission.

5. On perusal of complaint petition and the document annexed therewith I find that the complainant although has alleged that the terms and conditions was reduced in writing but no such paper has been filed. Since the agreement was reduced in writing, the matter has to be decided and adjudicated in a full-fledged trial by a competent Court. The dispute between the parties appears a civil dispute based on written agreement. I further find that there is no ingredient for the offence under sections 420 and 409/34 of the Indian Penal Code. In the complaint petition I further find that the labourers supplied to the petitioners worked at different place which was beyond the territorial jurisdiction of Court below. In such situation, criminal prosecution of these petitioners appears to be an abuse of process of Court.

6. In **State of Haryana v. Bhajan Lal**, it was, *inter alia*



observed as follows: (SCC pp. 378-79, 102): 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604.

“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."

7. The case of petitioners is squarely covered by guidelines given in sub para 7 of para 102 of above Bhajan Lal case.

8. Considering the submissions of parties, facts and circumstances of the case and also the guidelines given by the Hon'ble Supreme Court in the aforesaid case, the order dated 1st March 2013 passed by the learned Judicial Magistrate 1st Class, Begusarai in Complaint Case No. 153(C)/2013 as well as criminal prosecution of this petitioner on the basis of said order, is hereby quashed.

9. This criminal miscellaneous application is accordingly, allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.09.2017
Transmission Date	24.09.2017

