

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19420 of 2014

Arising Out of P.S.Case No. -76 Year- 2010 Thana -PATNA GRP CASE District- PATNA

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1. R. Palaniappan, son of Sri Ramasamy Goundere, Senior General Manager (Marketing), M/s Thiru Arooran Sugars Ltd, having its Registered Office at Eldorado, 5th Floor, 112, Uthamar Gandhi Salai, Nugambakkam, Chennai – 600 034 &
 2. B.Gopinath, son of Sri Balaram, Assistant Manager, M/s Thiru Arooran Sugars Ltd, having its Registered Office at Eldorado, 5th Floor, 112, Uthamar Gandhi Salai, Nugambakkam, Chennai – 600 034.

.... Petitioners

Versus

1. The State Of Bihar &
2. Assistant Commercial Manager, East Central Railway, Danapur, P.S. Danapur, District- Patna

.... Opposite Parties

With

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Criminal Miscellaneous No. 42757 of 2013

Arising Out of P.S.Case No. -76 Year- 2010 Thana -PATNA GRP CASE District- PATNA

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1. R.V. Tyagarajan S/O Sri V.S. Tyagarajan Mudaliar Chairman And Managing Director M/S Thiru Arooran Sugars Ltd., Having Its Registered Office At Eldorado, 5th Floor, 112 Uthamal Gandhi Salai, Nugambakkam, Chennai-600034
 2. G. Rajagopal S/O Sri S. Govindarajan, Executive Director, M/S Thiru Arooran Sugars, Ltd., Having Its Registered Office At Eldorado, 5th Floor, 112, Uthamar Gandhi Salai, Nugambakkam, Chennai- 600034

.... Petitioners

Versus

1. The State Of Bihar
2. Assistant Commercial Manager, East Central Railway, Danapur, P.S- Danapur, District- Patna.

.... Opposite Parties

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Appearance :

(In Cr.Misc. No.19420 of 2014)

For the Petitioners	:	Mr. Chitranjan Sinha, Advocate
	:	Mr. Sanjeet Kumar, Advocate
	:	Mr. Surya Nilambari, Advocate
For the Opposite Party No.2	:	Mr. Siddharth Prasad, Advocate
	:	Mr. Kaustubh, Advocate

(In Cr.Misc. No.42757 of 2013)

For the Petitioners	:	Mr. Chitranjan Sinha, Advocate
For the Opposite Parties	:	Mr. Kumar Ranjit Ranjan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR



CAV Judgement
Date: 03-08-2017

These two criminal miscellaneous application under Section 482 of the Code of Criminal Procedure have been filed for quashing the order dated 06.02.2013 passed by Railway Judicial Magistrate, Ist Class, Patna in G.R.P. Bakhtiyarpur P.S.Case No.76 of 2010 whereby and whereunder the learned Magistrate finding prima-facie case for the offence under Sections 420 and 406/34 of the IPC took cognizance of offence and summoned the petitioners and other co-accused.

2. The facts in brief is that the informant an Assistant Commercial Manager, East Central Railway, Danapur lodged an FIR with rail police station, Fatuha alleging inter-alia that 42 wagons of one rake loaded with sugar worth Rs.9,46,85,726/- reached at railway yard/godown at Fatuha on 10.02.2012 for unloading. The sugar was to be unloaded on production of railway receipt. For the release of sugar bags, the proprietor and employees of M/s Shree Shyam Agency, Muzaffarpur contacted Umesh



Choudhary, goods supervisor of Fatuha Rail Ware House and on demand of rail receipt by the goods supervisor, the representative of M/S Shree Shyam Agency told that the receipt was not available. The sugar bags were purchased from M/S Thiru Arooran Sugar Limited (in short 'TASL') Chennai and the company had sent the receipt through the courier to Shree Shyam Agency which had not yet been received. The representative of M/S Shree Shyam Agency produced a copy of E-mail which was sent by company on 02.02.2010 along with details of weight of each bags and an application with one cheque for an amount of Rs.2,16,37,572/- drawn in favour of sugar company as security. The representative further deposited an Indemnity Bond. The goods supervisor on being satisfied with the documents, released the sugar bags in favour of M/S Shree Shyam Agency on 10.02.2010. The petitioner R.Palanniappan of sugar company raised objection regarding release of sugar in favour of M/S Shyam Agency by giving a letter to the Railway. The informant on getting information



enquired into the matter and it was found that M/S Shree Shyam Agency in collusion with goods supervisor got the sugar released without taking papers from the consignee. Thereafter the informant lodged the present Bakhtiyarpur P.S.Case No.76 of 2010 for the offence under Sections 420 and 406/34 of the IPC. The matter was investigated and the police submitted chargesheet against the petitioners and other co-accused. The learned Magistrate finding prima-facie case for the offence under Sections 420 and 406/34 of the IPC took cognizance and summoned the accuseds.

3. Heard both sides and perused the record.

4. It has been submitted that the TASL company enquired about the status of cargo which was dispatched on 08.02.2010, for Fatuha where upon the Railway informed the company that sugar has been delivered at Fatuha on 10.02.2010 to Shree Shaym Agency, Muzaffarpur. Thereafter TASL filed a claim case before Railway Tribunal, Chennai under Section 13(1) (a)(i) of Railway Claims Tribunal Act, 1987 against Central Railway



Central Railway and East Central Railway, Hajipur for Rs.9,46,85,726/- together with interest at @ 12% per annum from the date of delivery of sugar till the payment towards loss sustained by TASL, on account of impermissible and unauthorized action on the part of Railways in having delivered the above consignment to unauthorized Firm in the absence of the Railway Receipts. The Chief Commercial Manager, Patna East Central Railway, Hajipur contested the case before Rail tribunal. In the said case M/S Shree Shyam Agency, Subham Sugar Agencies, Sri Umesh Choudhary (goods supervisor) and Sri Ambika Choudhary had filed interlocutory application for impleading themselves as party which after hearing was dismissed. After hearing, the claim was decided in favour of TASL on 07.04.2014. The respondents Southern Railway, Chennai and East Central Railway, Hajipur were directed to pay Rs.9,36,59,624/- together with interest. The railway filed appeal bearing CMA No.2222 of 2014 before Madras High Court. The Madras High Court as per order dated 08.08.2014 directed the



railway to deposit 25% of the awarded amount which was subsequently withdrawn by TASL. The railway filed a Money Suit No.14 of 2013 on 31.01.2013 against M/S Sri Shyam Agency and others. It has been further submitted that the above facts show that the dispute between the parties is purely a civil dispute which has been decided by the railway claim tribunal. A money suit is also pending against Sri Shyam Agency and others. There is absolutely no ingredient to constitute an offence under Section 420 of the IPC as there is no element of deceiving any person with an intention to cheat any person. The case of criminal breach of trust as defined under Section 405 of the IPC and dishonest misappropriation by these petitioners is also vague. The learned Magistrate has passed impugned order in mechanical manner without applying judicial mind and so the same is fit to be quashed.

5. The learned counsel for the Railway as well as learned APP opposed the submissions. It was submitted that the TASL company in collusion with Agency and other



co-accused has cheated the railway by getting the sugar delivered in favour of M/S Shyam Agency on the basis of E-mail given by Sugar Company. The criminal prosecution of the petitioners is quite maintainable besides civil case against the petitioners and so the impugned order does not require any interference.

6. On perusal of annexures available on record which are unimpeachable, I find that a claim case bearing OA1/2/2010 was filed before the Railway Tribunal, Madras on 22.09.2010 by TASL (company) which after hearing was allowed on 07.04.2014 in favour of TASL company. The railways were directed to pay a sum of Rs.9,36,59,624/- along with interest to the TASL. Against the order of Tribunal, the Railway has filed an appeal bearing CMA No.2222/2014 before Hon'ble Chennai High Court which is pending for disposal. It further appears that the railway department has filed a money suit no.14 of 2013 before Sub Judge-Ist, Patna against the M/S Shyam Agency & others for recovery of 9,46,85,726/-. The Railway filed a complaint



case no.739 of 2010 also against one of its employee, namely, Umesh Chaudhary, goods supervisor who had delivered the sugar in favour of M/S Shyam Agency. I further find that these petitioners have been made accused in their personal capacity. The petitioner nos.1 and 2 of Cr.Misc.No.42757 of 2013 are Chairman-cum-Managing Director and Executive Director respectively of the company. The petitioner nos.1 and 2 of Cr.Misc.No.19420 of 2014 are the General Manager Marketing and Assistant Manager respectively. The company who had entered into agreement for supply of sugar has not been made accused. The claim was made before Railway tribunal by the company so in absence of company, the officers/employees of company cannot be prosecuted as the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing/Executive Directors of the company. The claim of the company was allowed/decreed by the Railway tribunal. The civil liability of the parties has already been adjudicated and Railway Tribunal has allowed claim in



favour of sugar company and the same is binding on criminal courts. The Hon'ble Apex Court in M/S 'Karan Chand Ganga Pershad vs. Union of India (AIR 1971 SC 1244 at para -4) has held that "It is a well established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true." In view of above principle, it would cause embarrassment and harassment to the petitioner if the criminal proceeding is allowed to continue against the petitioners in face of the pendency of the appeal before Madras High Court and Money Suit pending before Civil Court, Patna between the parties on the same issue. It would be the decision of the Civil Court which would be final between the parties and would be binding upon the Criminal Court also.

7. The apex Court in State of Karnataka v. L.Muniswamy has observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of



the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or prosecution. The Court further observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature.

8. It is not in dispute that the present criminal case against the petitioner was lodged after filing of claim case by the TASL (sugar company). The claim case was filed on 22.09.2010 and prior to this, the TASL had complained about the wrong delivery of sugar. The present case is squarely covered under clause 7 of the observation given by the Apex Court in State of Harayana vs. Bhajan Lal case. The TASL company had filed claim case before Railway Chennai claiming an amount of Rs.9,46,85,726/-. The notice of claim case was served on railway authorities and thereafter the



present FIR was lodged on 04.12.2010.

The Hon'ble Apex Court in the said ruling reported in 1992 (supp(1) SCC 355 at column no.7 has observed that the inherent power under Section 482 of the Cr.P.C. could be exercised 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. The matter in dispute is sub-judice in the aforesaid two forum, i.e., appeal before Hon'ble Chennai High Court and another bearing Money Suit No.14 of 2013 before Sub Judge Court at Patna. The dispute between the parties is civil in nature and if the criminal prosecution of the petitioners is allowed, it would amount to abuse of the process of the Court.

10. In view of the above discussions, both the criminal miscellaneous application are allowed and the order dated 06.02.2013 passed by Judicial Magistrate, Ist Class,



(Railway) Patna in G.R.P. Bakhtiyarpur P.S.Case No.76 of 2010 (G.R.No.708 of 2010) with respect to the petitioners above named is set aside.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	11.08.2017
Transmission Date	11.08.2017

