

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10426 of 2017

Arising Out of PS.Case No. -297 Year- 2013 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

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1. Rahul Verma, son of S.P. Verma.

2. S.P. Verma, son of Late Harihar Prasad Verma.

Both are Proprietor Verma Tractor and Firm Equipment, Sasaram, Civil Lines,
St. Paul's School, P.S.-Sasaram, District-Rohtas.

.... Petitioners

Versus

1. The State of Bihar

2. Rajesh Kumar, son of Ram Parvesh Singh, resident of village-East Pali Road
Dihri, P.S.-Dihri, District-Rohtas at Proprietor M/s Shri Lakshmi Auto Pali
Road, Dihri, District-Rohtas.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Rajesh Singh, Advocate

For the Opposite Party no.2 : Mr. Jitendra Prasad Singh, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-11-2017

Heard learned counsel for the petitioners and learned
counsel for the complainant-opposite party no.2.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'Cr.P.C.') has been filed for quashing
the order dated 13.12.2016 passed by the learned Sub Divisional



Judicial Magistrate, Dehri-on-Sone in Complaint Case No.297 of 2013 whereby after taking cognizance of the offences punishable under Sections 341, 504 and 323 read with 34 of the Indian Penal Code, the petitioners have been summoned to face trial.

3. The case of the complainant is that on the advice of the accused persons he opened Laxmi Auto Show Room in March, 2007 and he used to take motorcycle from M/s. Verma Tractor and Farm Equipments, Civil Lines, Sasaram belonging to the accused persons for sale. On 18.02.2011, the accused Rahul Verma (petitioner no.1) came to the Showroom of complainant and asked him to deposit a sum of Rs.1,50,000/- in Account No.1555010405 BA02 which belonged to Bajaj Auto Ltd. On 18.02.2011 itself, the complainant deposited the amount by transferring the same from his PNB account at Dehri-on-sone. The said account of Bajaj Auto Ltd. is an account of M/s Verma Tractor and Farm Equipment and transaction takes place between M/s Verma Tractor and Farm Equipment and Bajaj Auto Ltd. The further allegation of the complainant is that the entire money was used by the accused persons for their business purposes and on asking the complainant used to assure that the amount deposited by him would be returned. In the month of July, 2012, when the complainant asked for his money or motorcycles in lieu of the amount deposited by him, the



accused persons refused to oblige and asked for proof of deposit in their account, which was provided by the complainant and the transfer of amount was shown through documents, but even after expiry of six months, they did not return the due amount. It is alleged that on 13.09.2013 when the complainant went to Sasaram with witnesses, the accused persons took him to the office of St. Paul's Academy and threatened him of dire consequences and forced him to sign on two blank sheets of paper. The complainant and his witnesses were abused and asked to go away. When they went to the police station, they were asked to go to the court.

4. On the basis of the aforesaid allegations, the complaint was filed on 17.09.2017 in the court of Sub Divisional Judicial Magistrate, Dehri-on-sone. The complainant was examined on solemn affirmation. Apart from the complainant, in course of inquiry, two witnesses E.W.1 Shashi Prabhakar Shukla and E.W. 2 Rabindra Kumar Singh were examined under Section 202 of the Cr.P.C. whereafter, the impugned order dated 13.12.2016, summoning the petitioners to face trial for the offences punishable under Sections 341, 504 and 323 read with 34 of the Indian Penal Code was passed.

5. Assailing the aforesaid order dated 13.12.2016, learned counsel for the petitioners submitted that in course of



inquiry, in exercise of powers conferred under Section 202(1) of the Cr.P.C., the learned Magistrate had called for an investigation report from the Officer-in-charge of Dehri Police Station. The Officer-in-charge, Dehri Police Station submitted his report, vide Memo No.1872 of 2016 dated 20.06.2016, as contained in Annexure-2 to the present application narrating the entire fact. In his report, he has stated that the alleged amount of Rs. 1,50,000/- was deposited in the account of Bajaj Auto Ltd. and not in the account of Rahul Verma or S.P. Verma or M/s. Verma Tractors and Farm Equipment, Sasaram. He submitted that the learned Magistrate while passing the impugned order did not give any credence to the investigation report submitted by the Officer-in-charge of the police station. He submitted that no money was ever deposited in the account of the petitioners or their firm. Thus, the very basis of the complainant's case is false. He submitted that in the statement made on oath, the complainant has not supported the allegation made in the complaint, in respect of his confinement by the accused persons at St. Paul's Academy or the fact that they abused him and asked him to go away. In absence of any support by the complainant to the allegations made in the complaint in his statement made on oath, the court below could not have taken cognizance of the offences alleged under the various provisions of the Indian Penal Code. He has



brought on record the certified computer generated statement of the firm from the financial year 2010 onwards bearing account No.1550104063402 standing in the name of Verma Tractor and Farm Equipment, Sasaram in order to substantiate that no money was transferred to the petitioners firm by the complainant.

6. Per contra, Mr. J.P. Singh, learned counsel for the complainant-opposite party no.2 submitted that the complainant was having business relation with the petitioners. He used to deposit money in the account of Bajaj Auto Ltd. at the behest of the petitioners on their assurance that against the amount deposited by him, he would get motorcycle of Bajaj Auto Ltd., which he may sale and earn profit as a sub-dealer of the company. He submitted that as per advise of the petitioners, the complainant had deposited Rs. 1,50,000/- in the account of Bajaj Auto Ltd. on 18.02.2011 through RTGS and the amount has already been credited to the account of Bajaj Auto Ltd., but the petitioners neither provided him motorcycle in lieu of the payment made to the Bajaj Auto Ltd. nor returned him the amount deposited in the account of Bajaj Auto Ltd. He submitted that the impugned action of the petitioners clearly make out offences punishable under Sections 406 and 420 of the Indian Penal Code. He submitted that though the court has not taken cognizance of the offences under Sections 406 and 420 of the Indian Penal Code, the



order taking cognizance under Sections 341, 504 and 323 read with 34 of the Indian Penal Code cannot be held to be bad because there is also allegation in the complaint that the petitioners had abused the complainant and confined him at St. Paul's Academy and coerced him to sign blank sheets of paper.

7. I have heard learned counsel for the parties and perused the record.

8. I find force in the submissions of the learned counsel for the petitioners.

9. The admitted case of the complainant is that he is known to accused persons from before and was having some business relation with them. It is also admitted that the amount of Rs.1,50,000/- was deposited by the complainant in the account of Bajaj Auto Ltd. and not in the account of the petitioners. Under such circumstance, the grievance of the complainant, if any, would have been against the company Bajaj Auto Ltd and not against the petitioners, but Bajaj Auto Ltd. has not been made accused in the complaint. That apart, the learned Magistrate has not taken cognizance for the offences under Sections 406 and 420 of the Indian Penal Code.

10. As far as the allegation of simple hurt punishable under Section 323 of the Indian Penal Code or wrongful



confinement punishable under Section 341 of the Indian Penal Code or intentional insult with intent to provoke breach of peace punishable under Section 504 of the Indian Penal Code for which cognizance has been taken are concerned, it would be manifest from the statement of the complainant made on oath that he has not supported the allegations made in the complaint in this regard.

11. It is well settled by now that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The Magistrate is not supposed to only look into the allegations made in the complaint drafted by a lawyer. He is supposed to carefully scrutinize the materials brought on record in course of enquiry and to find out truthfulness of the allegations or otherwise and then examine if any prima facie case is made out for summoning the accused and proceed against him.

12. Having regard to the submissions made on behalf of the parties and on perusal of the materials available on record, I am of the view that the petitioners have made out a case for interference and to set aside order, which has been passed mechanically without judicial application of mind.

13. In the result, the impugned order dated 13.12.2016 passed by the learned Sub Divisional Judicial



Magistrate, Dehri-on-sone in Complaint Case No.297 of 2013 is set aside. The petition stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.11.2017
Transmission Date	07.11.2017

