IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39876 of 2014

Arising Out of PS.Case No. -2965 Year- 2013 Thana -VAISALI COMPLAINT CASE District-VAISHALI(HAJIPUR)

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Lalan Kumar @ Lalan Kumar Singh Son of Yudh Shamsher Singh @ Shamsher Singh Resident of Trimurti Chowk in front of Tempo Stand, P.S. - Town Hajipur, District - Vaishali

.... Petitioner

Versus

1. The State of Bihar
2. Rishi Kumar Son of Ashok Prasad Singh Resident of Nayatola Jahangirpur, P.S. - Bidupur, Dist. - Vaishali

.... Opposite Party

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Appearance :

For the Petitioner	:	Mr. Sunil Kumar Mr. Kripa Shankar Jha
For the State	:	Mr. Ajay Kumar (APP)
For O.P. No. 2	:	Mr. Choubey Jawahar

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL ORDER

9 13-11-2017 Heard learned Counsel for the petitioner as well as the learned Counsel for the State and the learned Counsel appearing on behalf of the Opposite party No. 2.

The petitioner seeks quashing of the cognizance order dated 16.1.2014 passed by Sri Ravi Kumar, Judicial Magistrate, lst Class, Vaishali, Hajipur, in Complaint Case No. 2965 of 2013, thereby taking cognizance of the offence under Sections 420, 406 of the IPC and under Section 138 of the N.I.Act.

The brief fact of the complaint as narrated in the same is that this petitioner introduced himself to the complainant as Agent of UBI Power Technology Private Limited, Bhopal. The complainant was running a shop dealing in mobile and mobile accessories spare parts levelled as *Savitri Enterprises*. The petitioner gave proposal that if the complainant wish to become stockiest of UBI Company of Vaishali district then he will have to deposit Rs. 12,500/- for supply of mobile accessories and spare parts. He got a telephonic call arranged with Jitendra Thakur, the Proprietor cum Managing Director of UBI Company, who assured the complainant that he would make him stockiest if he deposits security money of Rs. 12,500/- with the company. Accordingly, the complainant gave Rs. 12,500/- as security money to accused No. 2, the petitioner, and transferred Rs. 2,50,000/- by RTGS in the account of Jitendra Thakur, accused No. 1, who supplied him spare parts of the mobile and other articles worth Rs. 1,80,000/- and the complainant started selling the accessories, but as the product was of low quality so the customers being aggrieved of the quality started returning back the products purchased by them. The complainant requested accused No. 1 to take back his goods supplied to him and return the proportioned money so returned back all the articles supplied by accused No. 1, pursuant to that he issued two cheques amounting to Rs. 1,13,549/- and Rs. 1,00,000/- from his account. When the cheques were presented both the cheques bounced due to insufficient fund; so he sent a legal notice to accused No. 1 on his assurance the complainant again presented the same after some time but again the cheques bounced; thereafter again sent legal notice to accused No. 1 but the money was not returned.

Learned Counsel for the petitioner submits that the only allegation levelled against the petitioner is that being an Agent of the company he introduced the complainant to accused No. 1 the Proprietor cum Managing Director of UBI Company and the complainant came in contact with him but no financial transaction was done with the petitioner. It is wrongly stated that Rs. 12,500/- was given to him as security money, there is no any documentary proof to show that money was transferred to petitioner by any instrument. Learned Counsel also submitted that there is no any ingredient of cheating or any kind of entrustment was made to the petitioner and it is also admitted position that the cheques were issued by Jitendra Thakur, accused No. 1 and not by this petitioner. This petitioner is only alleged to be an Agent of the company of accused No. 1. Relying on the case of ***Aneeta Hada Vs M/s Godfather Travels & Tours Pvt. Limited*** reported in ***2012(3) PLJR (SC) 103***, learned Counsel submits that unless the company is arraigned as an accused no other officials of the company can be prosecuted.

Learned Counsel appearing on behalf of Opposite party No. 2 submits that prima facie ingredients are disclosed against this petitioner also because he is the person who got the complainant introduced with accused No. 1; so he is also responsible for the loss caused to the complainant. Learned Counsel places reliance on the case of ***Mihir Kumar Acharya Vs. Calcutta Machinery*** reported in ***1999 Cri. L.J. 231***.

Having considered the rival submissions of the parties and on perusal of the record, in particular the allegations against the petitioner is limited to the point that he introduced the complainant to Jitendra Thakur, accused No. 1, the Proprietor cum Managing Director of UBI Company. The fact alleged in the complainant also reveals that the complainant came in contact with accused No. 1 and he was appointed as Stockiest of the Vaishali district for the goods manufactured by the company. The complainant also deposited Rs. 2,50,000/- through RTGS directly in the back account of Jitendra Thakur and he supplied mobile and accessories worth Rs. 1,80,000/- and as the product was not satisfactory he returned back all the goods supplied by the company and the proprietor Jitendra Thakur issued two cheques but both cheques got bounced. So there is no allegation of giving money to the petitioner by the complainant or any property being entrusted to the petitioner for attracting the ingredients of offence under Section 406 of IPC. No ingredients of Section 138 N.I.Act is attracted as both the cheques were issued by Jitendra Thakur the Proprietor of the company and not by the petitioner. There is also no material to show prima facie that Rs. 12,500/- was given to the petitioner rather the security money goes to the company. The decision relied upon by learned Counsel for O.P. No. 2 does not apply in the present case. The facts of the case of ***Mihir Kumar Acharya (supra)*** was entirely different to the case of the petitioner. The said judgment relates to the provisions under Section 305 IPC however same is not relevant in the facts of the present case. The facts alleged in the complaint do not disclose ingredients of cheating against this petitioner. So taking into account entire allegations in the complainant levelled against the petitioner ingredients of any of the offences under Sections 420, 406 IPC as well as offence under Section 138 N.I.Act is not made out against the petitioner. So continuance of the criminal proceeding against him would be abuse of the process of the Court.

Hence, entire criminal proceeding, inclusive of the cognizance order dated 16.1.2014 passed in Complaint Case No. 2965 of 2013 pending in the Court of Judicial Magistrate, lst Class, Vaishali, Hajipur, is hereby quashed only with respect to the petitioner.

The application stands allowed.

(Arun Kumar, J.)

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