

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.29944 of 2011**

Arising Out of Complaint Case No. 729C Year- 2006 Thana Kotwali District- MUNGER

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1. Virender Singh @ Binni Singh @ Birender Pal Singh son of late Sardar Dalip Singh, Director, Kohinoor Motors Private Limited.
  2. Gautam Singh @ Chandradip Singh son of late Sardar Baljit Singh, Director Kohinoor Motors Private Limited.
  3. Ansar ali @ Ansarul Haque, son of Late Md. Asrarul Haque Employee, Kohinoor Motors Private Limited.  
All M/S Kohinoor Motors Private Limited, B-26 Luvkush Towers, Exhibition Road, Patna.

.... .... Petitioner/s  
Versus

1. The State of Bihar.
2. Niraj Sharma, son of Shiv Prasad Sharma, resident of Shadipur, PS-Kotwali, District-Munger.

.... .... Opposite Party/s

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**Appearance :**

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|----------------------|---|-------------------------------------------------------|
| For the Petitioner/s | : | Mrs. Soni Srivastava, Advocate<br>Mrs. Madhuri Kumari |
| For the Informant    | : | Mr. Rajesh Sinha, Advocate                            |
| For the State        | : | Mr. Rana Randhir Singh, APP                           |

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

**ORAL JUDGMENT**

**Date: 29-08-2017**

Heard learned counsels for the petitioners, informant as well as the learned Additional Public Prosecutor for the State.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 05.12.2008 passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Munger in Complaint Case No. 729C of 2006 whereby and whereunder the learned Magistrate finding *prima facie* case for the offences under sections 379, 385 and 504 of the Indian Penal Code, summoned the petitioners.



3. The fact of this case, in brief, is that the complainant (opposite party no. 2) had filed a Complaint Case No. 729C of 2006 on the file of learned Chief Judicial Magistrate alleging *inter alia* that on 04.08.2006, these petitioners along with six others forcibly entered into his campus and took post dated cheque for an amount of Rs.4,00,000/-(four lacs) in favour of Kohinoor Motors, Patna. It has further been alleged that prior to this occurrence, the accused persons had taken an undated cheque and forcibly got an endorsement on their letter pad to this effect that they will make payment in favour of Kohinoor Motors on different dates. The complainant has further alleged that the accused persons looted gold chain worth Rs.20,000/- and cash amount of Rs.50,000/- besides some papers/documents. The matter was enquired and the learned Magistrate finding *prima facie* case against the petitioners, ordered for issuance of summons.

4. The learned counsel for the petitioners submits that the learned Magistrate has passed the impugned order without applying judicial mind. The allegation against the petitioners, is far from truth which is apparent on mere perusal of complaint petition itself. The complainant has filed the complaint case out of vengeance in order to counter the complaint case of these petitioners. The petitioner no. 2 is the Director of Kohinoor Motor Private Limited.



The complainant had entered into an agreement for sale of tractors with the firm of these petitioners which deals in the business of tractors. The complainant had availed credit facility of Company of these petitioners and had issued a cheque for an amount of Rs.1292058.69 (twelve lacs ninety two thousand fifty eight rupees and sixty nine paisae) in favour of firm of these petitioners. The said cheque was dishonoured by the Bank and so, the Company of these petitioners had filed a Complaint Case No. 620(c) of 2006 on 06.03.2006 on the file of learned Chief Judicial Magistrate, Patna for the offences under sections 384, 406, 409, 420, 120B of the Indian Penal Code and 138 of the Negotiable Instrument Act. After five months of institution of said case, the complainant (opposite party no. 2) has filed the present complaint case only to bring these petitioners on a table of compromise to settle the dispute. The learned counsel for the petitioners in this regard referred Ruling reported in **(2009) 1 SCC 706 [Mahindra & Mahindra Financial Services Limited and another vs. Rajiv Dubey]**, **(2015) 6 SCC 287 [Priyanka Srivastava and another vs. State of Uttar Pradesh and others]** and **2011 (1) PLJR (SC) 23 [Manoj Mahavir Prasad Khaitan vs. Ram Gopal Poddar and another]**. It has been submitted that in view of the aforesaid Ruling, the order taking cognizance against these petitioners, is not sustainable and is fit to be quashed.



5. The learned counsel for the informant as well as learned Additional Public Prosecutor opposed the submission.

6. 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).

7. 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 spite 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."

On perusal of complaint petition, impugned order and annexures enclosed with this application, I find that these petitioners are Director and employees of Kohinoor Motor Private Limited. The firm of these petitioners had filed a Complaint Case No. 620C of 2006 on 6.3.2006 against the opposite party no. 2 for the offences under sections 384, 406, 409, 420, 120B of the Indian Penal Code and section 138 of the Negotiable Instrument Act and after 5 months of institution of said complaint case, the present case has been filed by the opposite party no. 2. 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 clause 7, para 102 of State of Haryana and others vs. Bhajan Lal and others.

Therefore in view of principles laid down by the Supreme Court as discussed above, the order dated 05.12.2008 passed in Complaint Case No. 729C of 2006 and the criminal prosecution of these petitioners is hereby quashed.

This application is, accordingly, allowed.

**(Sanjay Kumar, J)**

Mahesh/-

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