

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.14099 of 2016

Arising Out of PS.Case No. -1172 Year- 2015 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Ravi Karamcheti son of Sri Ram Karamcheti C/o Sun Edison Solar Power India Pvt. Ltd. having registered office at Menon Eternity, 10th Floor, New House No. 165, Old House No.-110, St. Mary's Road, Alwarpet, Chennai- 600018 (Accused no.2 in the Court below).
 2. Pashupathy Gopalan son of Sri Ramanathan Gopalan C/o Sun Edison Solar Power India Pvt. Ltd. having registered office at Menon Eternity, 10th Floor, New House No. 165, Old House No.-110, St. Mary's Road, Alwarpet, Chennai- 600018 (Accused no.6 in the Court below).
 3. Rahul Sankhe son of Sri Janardan Shankaram Sankhe having office at 38/1997, Vakratunda CHS Ltd., Bandra East , Mumbai-25, (Accused no.7 in th court below).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Kumar Parmendera @ Kumar Pramendra son of Late Saryu Prasad Singh, proprietor of M/s Vinod Enterprises having office at GT Road, Sasaram, Rohtas and also at House no. 26, Sardar Patel Path, Behind Krishna Apartment, Boring Road, P.S.- S.K. Puri, District- Patna (Complainant in the Court below).

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. A.B.Ojha, Sr. Advocate
	:	Mr. Nitesh Kumar, Advocate
	:	Mr. Bharat Bhushan, 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: 11-10-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed by the petitioners for quashing Complaint Case No.1172(c) of 2015 including the order dated 21.05.2015 passed by the learned Judicial Magistrate, 1st Class, Patna whereby in exercise of power conferred under Section 204 of the CrPC



the petitioners have been summoned to face trial for the offences punishable under Sections 406, 420, 448, 471, 506 and 120B of the Indian Penal Code.

2. The opposite second party filed a complaint case no.1172(c) of 2015 in the court of Chief Judicial Magistrate, Patna impleading the following persons in the column of accused namely:

- (i) Sun Edison Solar Power India Pvt. Ltd.,
Office at New House No.-165,
Old House No.-110, St. Mary's Road
Alwarpet, Chennai- 600018
- (ii) Mr. R. Karamchetti, G.M., Solar Pump
C/o Sun Edison Solar Power India Pvt. Ltd.,
Office at New House No.-165,
Old House No.-110, St. Mary's Road
Alwarpet, Chennai- 600018
- (iii) Mr. Bikesh Jha, Manager, Solar Pump
C/o Sun Edison Solar Power India Pvt. Ltd.,
Office at New House No.-165,
Old House No.-110, St. Mary's Road
Alwarpet, Chennai- 600018
- (iv) Vinay Bhatia, Director,
C/o Sun Edison Solar Power India Pvt. Ltd.,
Office at New House No.-165,
Old House No.-110, St. Mary's Road
Alwarpet, Chennai- 600018
- (v) Mr. Chandramauli, Company Agent,
C/o Sun Edison Solar Power India Pvt. Ltd.,



Office at New House No.-165,
Old House No.-110, St. Mary's Road
Alwarpet, Chennai- 600018

(vi) Mr. Pashupati Gopalan, Country Head,
C/o Sun Edison Solar Power India Pvt. Ltd.,
Office at New House No.-165,
Old House No.-110, St. Mary's Road
Alwarpet, Chennai- 600018

(vii) Mr. Rahul Sankhe, President,
C/o Sun Edison Solar Power India Pvt. Ltd.,
Office at New House No.-165,
Old House No.-110, St. Mary's Road
Alwarpet, Chennai- 600018

3. The complainant stated that he is a reputed business man of the State of Bihar and is running his business in the name and style of M/s Vinod Enterprises. He basically deals in agricultural equipments and other related products. The accused no.1 Sun Edison Solar Power India Pvt. Ltd. (for short 'company') is a Private Limited Company duly incorporated under the Indian Companies Act, 1956 whereas the other accused persons are office bearers of accused no.1 and responsible for day-to-day affairs of the company and are legally bound to face the consequences arising out of their omissions and commissions. He alleged that in the year 2013 the accused persons with oblique motive used his money, infrastructure and network for their personal gain. They



approached him in the month of January, 2014 at his office and requested him to become a distributor of their company for Bihar and Jharkhand for their solar water pumps. They also assured him that the company will provide all the logistic support as per his wish and advice for development of business. In this back-drop, an agreement was executed between him and the accused persons on 24.02.2014 whereby he was appointed as distributor of the company for the purpose of sale of solar water pump products within the State of Bihar and Jharkhand. The accused no.4 Vinay Bhatia signed the agreement in presence of the witnesses on behalf of the company. The accused persons advised him to take a new and big office at Boring Road, Patna because in the coming months the sale would increase to crores of rupees. As per their advice, he took a huge office on rent and also employed several staffs. However, the company did not supply any logistic support in expanding the business or to procure any order. The sales team of the company never visited his office. The accused persons created pressure upon him to keep a ready stock of fifty solar water pumps so that the same may be supplied to the concerned government departments at the earliest. The accused no.3 Mr. Bikesh Jha and accused no.5 Mr. Chadramauli directed him to deposit money for dispatch of fifty pumps and the complainant on their advice deposited rupees forty lacs through cheque of PNB dated 10.03.2014 and again on demand an amount of



Rs.1,20,65,000/- through cheque of HDFC dated 25.02.2014 with the accused persons. The accused persons supplied the pumps on 29th and 30th May, 2014. He inspected the stock in his godown in presence of the staffs and witnesses present there and was shocked to find that the accused persons took an amount of Rs.1,60,65,000/- for supply of fifty solar water pumps of the company, but they cheated him and supplied solar water pumps of different make. When he objected such unethical behaviour of the accused, they promised that these pumps would be supplied to the Fisheries Department at the earliest, but the same was also not done. They also exhibited documents of Ministry of New Renewable Energy and convinced him that they are channel partner of the Government of India and are going to supply solar water pumps to the Fisheries Department of the Government of Bihar, but nothing has been done as per their assurance on their part.

4. On the basis of these allegations, the complainant has alleged that due to ill motive and wrong intention of the accused persons, he suffered a loss to the tune of Rs.1,60,65,000/-. Lastly he has alleged that the accused no.3, 4 and 5 along with some unknown persons came to his office situated at Patna on 18.03.2015 at 7.30 p.m. and forcibly took away some valuable documents. They also assaulted his employees when they objected the illegal acts of accused no.3 to 5.

5. Assailing the impugned order 21.05.2015, Mr. A.B.Ojha,



learned Senior Advocate appearing for the petitioners submitted that none of the petitioners were party to the alleged commercial transaction between the complainant and the company. He submitted that petitioner no.1, Ravi Karamcheti, are the officer of the company settled at Chennai at the relevant time never visited Bihar or the place of the complainant. The petitioner no.2 Pashupathy Gopalan is an authorized signatory of Sun Edison Energy Holding BV, the Netherland having its registered office at Amsterdam and is incharge of Asia Pacific and Sub-Sahara countries. He has got no concern with the affairs of the company having its registered office at Chennai in India. The petitioner no.3 Rahul Sankhe joined the service of the company from January, 2010 as the Director of Business Development and after about three years in 2013 he also became Director of Residential Solar for Asia Pacific Markets and after May, 2014 he was transitioned to a role of Managing Director in India. However, in August, 2015 he left the service of the company. He submitted that the complainant has not even whispered about any role having been played by any of the three petitioners which is apparent from the complaint petition supported by affidavit, statement on solemn affirmation and evidence of three witnesses examined during enquiry under Section 202 of the CrPC. He submitted that even otherwise the company had supplied fifty solar water pumps for which payment was made. He submitted that misleading complaint has been



filed making allegation of criminal breach of trust, cheating etc. ingredients of which are not at all attracted in the present case as all the fifty sets of solar water pumps were duly supplied and the complainant happily accepted those sets. He submitted that the company filed a petition in Madras High Court for appointment of arbitrator in Original Petition No.756 of 2015 and the complainant has appeared in the case and has filed his reply whereafter a retired Judge has already been appointed as arbitrator in respect of the alleged transaction of pump sets.

6. Opposing the contentions advanced by the learned Senior Advocate appearing for the petitioners, Mr. J.P.Singh, learned Advocate appearing for the complainant submitted that the petitioners being office bearers of the company are fully responsible for the acts of omissions and commissions on the part of the company. He submitted that allegations have been made in the complaint against all the accused persons that they approached the complainant and induced him to be a distributor of the company and on their persuasion the complainant became ready to be distributor of the company and parted with huge amount of Rs.1,60,65,000/-. He submitted that the petitioners named in the complaint are jointly and severally responsible for the alleged cheating and misappropriation of the amount of the complainant.

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



8. It would be evident from perusal of the complaint that no specific role has been attributed against the petitioners of the present case either in the complaint or in the statement made by the complainant on oath or in the statement of witnesses recorded in the course of enquiry. Their impleadment in the column of accused is based merely on the premises that they happen to be office bearers of the company incorporated under the Indian Companies Act.

9. The fact that petitioner no.2 Pashupathy Gopalan is the authorized signatory for Sun Edison Energy Holding BV, the Netherland having its registered office at Amsterdam has not been disputed by the complainant. The other two petitioners being senior officials of the company are admittedly residing at Chennai where the registered office of the company situated. The complainant has not produced any document or evidence to suggest deception of any sort made by them. A completely vague and general kind of allegation made in the complaint that all the accused persons persuaded him to be a distributor of the company could not have been made a ground for summoning the petitioners to face trial. It is well settled position in law that save and except the provisions specifically provided, the Indian Penal Code does not contemplate any vicarious liability on the part of the person, who is not charged directly for commission of an offence.

10. In view of the allegations made in the complaint, the



statement of the complainant made on oath and the statement of the witnesses in support of the complaint, I am of the considered opinion that no case for summoning the petitioners was made out as the materials on record are bereft of even basic allegation, which are necessary for making out culpability of offence against the petitioners.

11. In that view of the matter, in the opinion of the court, allowing the prosecution against the petitioners to continue would be an abuse of process of the court.

12. Accordingly, the impugned order dated 21.05.2015 passed by the learned Magistrate, so far as the petitioners are concerned, is hereby quashed.

13. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.10.2017
Transmission Date	15.10.2017

