

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22609 of 2014

Arising Out of PS.Case No. -2024 Year- 2012 Thana -MUZFFARPUR COMPLAINT CASE
District- MUZAFFARPUR

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Sunil Kumar Jain Son of Late Jaswan Rai Jain M.D. of M/S North Eastern Carrying Corporation Ltd. 9062/47 Ram Bagh Road, Azad Market Delhi - 110006.

.... Petitioner/s

Versus

1. The State of Bihar.
2. M/S Shrawan Kumar Modi of M/S Om Sri Vijay Corporation, Sutta Patti, Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shambhu Prasad, Adv.
For the Opposite Party No.2 : None.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 28-06-2017

Heard the learned counsel for the petitioner.

2. The opposite party no.2 has appeared through his counsel, upon notice being issued by this Court. The matter was passed over since the learned counsel for the opposite party no.2 had not appeared. However, the learned counsel for the opposite party no.2 has again not appeared even upon second call.

3. In view of the aforesaid, this Court deems it fit and proper to proceed with the matter.

4. Shorn of unnecessary facts, the brief facts of the case is that the complainant, namely, Srawan Kumar Modi had filed a Complaint case bearing No. 2024 of 2012 before the court of learned



Chief Judicial Magistrate, Muzaffarpur, inter alia stating therein that the complainant is the representative of one Om Shri Vijay Corporation, Muzaffarpur and he is also an agent of one Bharti Prints, situated at Surat, Gujrat. The complainant has further alleged in the complaint petition that the petitioner had come to the place of the complainant on various occasions requesting him to transport the goods through his transport company, namely, N.E.C.C. Ultimately, the complainant is said to have asked the Bharti Prints, Surat, Gujrat to transport clothes to Muzaffarpur through the transport company of the petitioner herein. Accordingly, clothes were said to have been transported to the transport company of the petitioner on 29.04.2009, the value whereof is said to be of Rs. 44, 295/-. The further case of the complainant is that when the goods did not reach him, he contacted the petitioner and he was told that the same has been misplaced and search is being made for the same. It has been further alleged that the complainant has suffered a loss of Rs.44,295/-, as such he is entitled to the said amount and further he is entitled to interest totalling to Rs. 26000/- as well as compensation on account of business loss amounting to Rs. 5,00,000/-.

5. It appears that the statement of the complainant was recorded on solemn affirmation on 18.02.2013 by the learned Judicial Magistrate, 1st Class, Muzaffarpur, however, other witnesses were not



examined.

6. The learned trial court by an order dated 17.07.2012 has been pleased to issue summon to the petitioner herein to appear before the said court. The learned trial court has further by order dated 20.01.2014 taken cognizance against the petitioner for the offence punishable under Sections 406 and 420 of the Indian Penal Code.

7. In such view of the matter, the petitioner has approached this Court by filing a petition under Section 482 of the Code of Criminal Procedure for quashing of the order dated 20.01.2014 passed by the learned Judicial Magistrate, Ist Class, Muzaffarpur.

8. The learned counsel for the petitioner has submitted that nothing has been brought on record by the complainant to show that the consignment was booked for transportation and that freight was paid for transporting the said consignment. It has been further submitted that the allegations are general in nature and do not constitute cognizable offence. It is also submitted that at best the instant case can be said to be a case of civil nature and the sum of interest or compensation etc. claimed to be payable to the complainant, can only be awarded to the complainant either in a civil suit or by a competent consumer court.

It is apparent from the complaint that at best the said case



can be said to be a case of transporting of goods from one city to another and for that purpose, the services of the petitioner as a transporter is said to have been used by the complainant. The complainant has failed to produce any other evidence apart from his statement on oath as recorded by the trial court and has even not produced any proof of booking of the goods, said to have been transported, much less proof of payment of freight charges.

9. It is a well settled law that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. Reference be had to a case reported in (2006) 6 SCC 736 (**Indian Oil Corporation v. NEPC India Ltd.**). The Hon'ble Apex Court in the said judgment i.e. **Indian Oil Corporation v. NEPC India Ltd.** (supra) has further cautioned that there is growing tendency in business circles to convert purely civil disputes into criminal cases since civil law remedies are time-consuming, as such any effort to settle civil dispute and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

10. The Hon'ble Apex Court in the case of "**Joseph Salvaraja v. State of Gujarat and others**", reported in (2011) 3 SCC (Crl.) 23, held as under:-



“In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in *Devendra v. State of U.P.*, (2009) 7 SCC 495, in which, it was held (para-27) that a distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.”

11. The Hon’ble Apex Court in a judgment reported in (2007) 12 SCC 1 (**Inder Mohan Goswami v. State of Uttaranchal**), after considering series of decisions has observed as follows:

“46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.”

12. The Hon’ble Apex Court in a leading case, reported in 1992 Supp (1) SCC 335 (**State of Haryana v. Bhajan Lal**) has laid



down guidelines and enumerated category of cases where inherent power under Section 482 Cr. P. C. can be exercised by the High Courts. It would be useful to quote paragraph-102 of the said judgment i.e. State of Haryana v. Bhajanlal (supra):

“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 any 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.”

13. Having regard to the facts and circumstances of the case as also the law laid down by the Hon’ble Apex Court on the subject matter it is clear that the instant complaint appears to be purely a civil dispute and has been given a colour of criminal case only with a view to extract money from the petitioner. I find that neither the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety constitute any prima facie offence nor disclose commission of cognizable offence as against the petitioner and secondly, a bare perusal of the complaint



shows that the nature of entire dispute is civil and does not involve any criminal offence The instant case definitely fall under clause (1) to (3) of paragraph no. 102 of the aforesaid judgment rendered in the case of Bhajan Lal (supra), so as to warrant exercise of inherent power u/s 482 Cr.P.C. as well as is covered by the well settled law laid down by the Hon'ble Apex Court, as discussed herein above in the preceding paragraphs.

14. In such view of the matter, the instant petition is allowed, the order dated 20.01.2014 passed by Sri Deepak Srivastava, J.M. Ist Class, Muzaffarpur in Complaint Case No. 2012 (Trial No. 3983 of 2014) is hereby quashed and consequently, the entire proceedings emanating therefrom also stands quashed.

15. There shall be no order as to costs.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
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