IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19422 of 2014

Arising Out of Complaint Case No. -1588 Year- 2012 Thana -Mithanpura District- MUZAFFARPUR

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Dinesh Thakkar Son of Sri Dariyanumal Thakkar, resident of 1401, 2A, Raheja Classique Building, Andheri New Link Road, Near Fame Adlab, Andheri (W), Mumbai-53.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ramadhar Singh Son of Late Rajeshwar Singh, resident of mohalla- Diwan Road, P.S.- Mithanpura, District- Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	M/s Mrigank Mauli, Prince Kumar Mishra and Sanket, Advocates.
For the O.P. No. 2	:	Mr. Sanjay Kumar, Advocate
For the State		Mr Jharkhandi Upadhyay, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-09-2017

1. Heard both sides and perused the record.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order 08.05.2013 passed by the learned Judicial Magistrate 1st Class, Muzaffarpur in Complaint Case No. 1588 of 2012. The learned Magistrate, as per above order, found *prima facie* case for the offences under sections 341 and 504 of the Indian Penal Code and summoned the petitioner.

3. The facts, in brief, is that the opposite party no. 2 had filed a complaint case against this petitioner and other co-accused alleging *inter alia* that the Firm M/s Angel Broking Commodities Company deals in share market and it has its Branch Office at Kedarnath Road, Muzaffarpur, which is named as Appu Apoorva Finance Services. It is alleged that this petitioner and other accused were involved in duping the public by enticing them with offer of making them earn huge profit. The complainant (O.P. No. 2) on being enticed by the accused had deposited an amount of Rs. 72,500/- with the petitioner on 25.07.2010 for purchasing 1000 Kg. of copper at the rate of Rs. 350/- per Kg. and when the prices had gone up to Rs. 470 per Kg., the complainant had directed the accused to sell the same on 15.02.2011 and deposit the amount in his account. The accused after much dithering, deposited an amount of Rs.2,500/- and rest amount has been swindled by the accused. The petitioner thus, cheated the complainant. It has been alleged that on the date of occurrence, all the accused with intention to erase all proof of cheating confined the complainant and tried to force him to sign on the account closing form. On refusal of complainant, he was assaulted. The petitioner snatched an amount of Rs. 1,000/- and also some important document from the complainant. In course of enquiry, the complainant on solemn affirmation supported the case and the learned Magistrate finding *prima facie* case, summoned all the accused to face the trial.

4. The learned counsel for the petitioner submitted that the petitioner is the Founder Chairman and Managing Director of Angel Group of Companies which includes M/s Angel Commodities Broking Private Limited, Angel Securities Limited and Angel Broking Private Limited and the name of petitioner has been registered in Form-32 before the Registrar of Companies. The petitioner is resident of Mumbai, Maharashtra. The Angel Group of Company deals the business of Equity, Trading in Commodities, Portfolio Management Services etc. The Apoorva Financial Services located at Muzaffarpur is the sub-broker of Angel Broker Commodity. The petitioner has no concern with the Apoorva Financial Service Limited except that as per Memorandum of Understanding, Apoorva Financial Services was allowed to conduct retail broking operation. As per the agreement between the Company of the petitioner and M/s Apoorva, the Apoorva was to deal directly to the retail client at his location and it was the responsibility of M/s Apoorva to contain a risk with regard to position undertaken by the clients. The complainant has given false address of this petitioner which is apparent from the complaint petition but fraudulently got the summons issued at the residence of the petitioner at Mumbai. The complainant made payment of Rs. 72,500/- during the period from 21.07.2010 to 15.02.2011 on six occasions. The petitioner and his Company is not responsible for any incident between the M/s Apoorva and the complainant. The prosecution of this petitioner is malicious and is not sustainable in the eyes of law in view of unimpeachable documents, which have been annexed with this application. The learned Magistrate disbelieved the case of cheating, breach of trust and theft and so has refused to take cognizance under sections 406, 420 and 379 of the Indian Penal Code. The allegation against the petitioner is highly improbable, as he is Managing Director of a Group of stagious Company having turn over of rupees six lakh fifty seven thousand one hundred and eighteen crores. This Company has employee strength of over 4000 and in total 8 lakh clients. It is not supposed that such a person would go to Muzaffarpur to get an account closed and snatch an amount of Rs.1,000/- from the complainant. The allegation made in the complaint petition does not constitute offence under sections 341 and 504 of the Indian Penal Code and so, the impugned order is fit to be quashed.

5. The learned counsel for the opposite party no. 2 as well as learned A.P.P. opposed the submission. It was submitted that the learned Magistrate on the basis of material on record, rightly summoned the petitioner to face the trial for the offences under sections 504 and 323 of the Indian Penal Code.

6. On going through the complaint petition and documents annexed with this application, I find that the petitioner is resident of Mumbai. The documents on record are enough to show shadow that the petitioner is residing permanently at Mumbai. In the complaint petition, no specific averment has been made regarding the insult by abuse to the complainant –opposite party no. 2 at the hands of the petitioner. In the complaint petition it has been simply alleged that they forcibly pulled the complainant to their Company and forced him to sign on the Account Closing Form. The allegation that all the three accused abused and assaulted the complainant appears vague and there is no specific allegation against this petitioner.

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."

8. On perusal of complaint petition and documents which are unimpeachable, I find that this petitioner is Chairman and Managing Director of Angel Group of Companies, Munger. The allegation made in complaint petition appears absurd and improbable in face of unimpeachable documents. The averments in the complaint if assumed to be true, do not make out the offence under section 341 or 504 of the Indian Penal Code. The facts of the present case would fall within the category nos. 5 and 7 of the aforesaid Ruling.

9. In view of the facts and circumstances as discussed above and taking into consideration the law laid down by the Supreme Court in the decision quoted above, the instant application is allowed and the impugned order dated 08.05.2013 passed by the learned Judicial Magistrate 1st Class, Muzaffarpur in Complaint Case No. 1588 of 2012 against the petitioner is quashed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10.09.2017
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