

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46445 of 2014

Arising Out of PS.Case No. -668 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Smt. Shalu Singh @ Shalu Singh Wife of Ratnesh Singh alias Ratnesh Kumar Singh, Proprietor of M/S S.A. Trading, Lal Bagh Colony, Police Station - Tilka Manjhi, District - Bhagalpur, Permanent Address Village - Aguwani, Police Station - Parbatta, District- Khagaria and Village - Kushwaha, Rajguru, Tarapur, Police Station - Tarapur, District- Munger.
 2. Sri Ratnesh Kumar Singh alias Ratnesh Kumar Singh alias Ratnesh Singh Son of Late Narmadeshwar Prasad Singh, Resident of Village - Kushwaha Rajguru, Tarapur, Police Station - Tarapur, District - Munger.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Indrajit Chatterji Son of Late Premansu Mohan Chatterji, Resident of CB 191, Sector 1 Salat Lake Kolkata - 700064 (West Bengal) at Present Assistant General Manager, AMCO Batteries Ltd., Registered Office 1st Floor, Addison Building 803, Anna Salai, Chennai - 600002.

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Viveka Nand Singh, Advocate.
For the State : Mr. S. Dayal, A.P.P.
For the Opp. Party no. 2 : Mr. Gouranga Chatterjee, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 12-10-2017

Heard learned counsel for the petitioners and learned counsel representing the complainant – opposite party no. 2 as well as learned A.P.P. for the State.

2. Petitioners in the present case are seeking quashing of the order dated 03.10.2012 passed by learned Sub Divisional Judicial Magistrate, Patna City in Compliant Case No. 668(C)/2012 by which the learned Magistrate has taken cognizance of the offences under



Sections 406, 418 & 504 of the Indian Penal Code and decided to issue summons to the petitioners.

3. Learned counsel for the petitioners refers the complaint petition which is Annexure-1 to the present application. According to the learned counsel, a bare perusal of the complaint petition without adding or subtracting anything out of that would show that the petitioners on the one hand being the Proprietors of M/s S.A. Trading of Bhagalpur and the opposite party no. 2 being the representative of the company, namely, M/s AMCO Batteries Limited were in a business relationship. According to him, there are complaints that the company was supplying batteries to the accused persons according to their demand and the accused persons had promised that they will make prompt payments of the goods received by them but, later on, when the company found that the accused persons were making irregular payments, the company wanted to stop supplying goods, as the accused persons gave a false representation that they will liquidate the dues very soon, the company continued with the supply. Learned counsel further submits that according to the complainant, the accused gave seven cheques of various dates amounting to Rs. 12,00,000/- to the company but those cheques stood dishonoured on presentation due to insufficiency of funds. Admittedly no action was taken under the provisions of the Negotiable Instruments Act, 1881. The business



relationship, according to the complaint, had ceased to exist with effect from 15.10.2010. A reading of the complaint, according to the learned counsel, would show that in fact it is an admission of the complainant that the accused paid a sum of Rs. 1,98,000/- but the allegation is that accused-petitioners did not make payment of rest amount which led to filing of the present case.

4. Submission of the learned counsel representing the petitioners is that the dues of the company is a disputed claim, the parties were having business relationship and there were several transactions where under a running account they were maintaining their debits and credits and, if at all, the complainant is of the view that certain amount has not been paid by the accused persons, it would only be in the nature of a money claim which can at best give rise to a civil dispute but in no way in the facts of the present case a *prima facie* case under Sections 406, 418 & 504 IPC is made out. Learned counsel also submits that the learned Magistrate has taken cognizance under these provisions of the Indian Penal Code in a routine and mechanical manner as it will be evident that there is no allegation of entrustment of any goods, the relationship is very clearly stated as in the nature of a transaction where sale of goods had to take place, further there is no allegation of committing any act of intentional insult, therefore, there was no occasion for the learned Magistrate to



take cognizance under Section 504 IPC. Learned counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of ***Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.***, reported in ***(2007) 12 SCC 1***.

5. On the other hand learned counsel representing the complainant – opposite party no. 2 has opposed the application submitting that in the facts of the present case, the order taking cognizance has been rightly passed and it needs no interference. Learned counsel submits that no doubt there was a business relationship between the parties but the fact remains that the complainant did not pay the outstanding dues to the company and the cheques issued by him stood dishonoured for insufficiency of funds. He, however, is not in a position to explain as to why despite cessation of relationship with the accused admittedly with effect from 15.10.2010, even after dishonour of cheques due to insufficient funds, no action was taken by the opposite party no. 2 or by the company to whom the opposite party no. 2 is representing under the provisions of the Negotiable Instruments Act, 1881.

6. This Court has perused the materials available on the record and has considered the rival submissions. At this stage, learned counsel for the opposite party no. 2 submits that because after dishonour of cheques some payments were made by the accused



persons and they had promised to pay the rest of the amount, therefore, no action was taken against dishonour of cheques. Thus from the complaint petition as well as from submissions of learned counsel representing the opposite party no. 2 it is evident that the present complaint has been brought as a tool to realize the money allegedly due to the complainant.

7. From the contents of the complaint petition coupled with the other documents enclosed with the complaint petition, which have not been controverted or denied on behalf of the opposite party no. 2, this Court would come to a conclusion that when the parties were in a kind of business relationship where goods were being supplied to the firm of the petitioners at Bhagalpur since 2006 and payments were being made by the firm in a running account, no case U/S 406 IPC would be made out. This is not a case where the complainant has alleged that the goods were handed over by way of entrustment to the accused persons. Learned counsel for the opposite party no. 2 has admitted that the parties were in a business relationship since 2006 and the petitioners have brought on record a statement of accounts showing that the accused persons had also a claim against the company / opposite party no. 2.

8. Learned counsel for the opposite party no. 2 denies the claim but this Court finds that whatever is the dispute it is at best in



the nature of a money claim by both the parties. In the facts of the present case, this Court is of the view that a criminal proceeding against the petitioners for alleged non-payment of a disputed claim is only an abuse of the process of the court.

9. Petitioners have relied upon paragraph 23 to 26 of the judgment referred here-in-above which are quoted hereunder for a ready reference.

“23. This court in a number of cases has laid down the scope and ambit of courts_ powers under Section 482 Cr.P.C. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

25. Discussion of decided cases Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v.*



DPP [1964] AC 1254, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *DPP v. Humphrys* [1977] AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

26. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866, this court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

- (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.”

10. This court finds that the learned Magistrate has taken cognizance under Section 406 IPC without there being any ingredient and further cognizance under Section 418 and Section 504 IPC even though there is no averment in the complaint petition to give rise to a *prima facie* view of an offence under those provisions is bad in law and the same is liable to be set-aside.

11. In the result the impugned order taking cognizance is set aside and the application is allowed.



12. Let it be made clear that any observation for the purpose of this case made here-in-above shall not prejudice the case of either party in a civil dispute.

(Rajeev Ranjan Prasad, J)

Dilip, AR

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