

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49641 of 2013

Arising Out of PS.Case No. -2971 Year- 2011 Thana -PATNA COMPLAINT CASE District-
PATNA

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Vodafone Spacetel Limited a company incorporated under the provisions of the Companies Act 1956 having its registered office at C- 48, Okhla Industrial Area, Phase- II, New Delhi and circle office at Mayfair Court, Near Hinoo Bridge, Hinoo, Ranchi- 834002, local/zonal office at Sai Corporate Park, Rukanpura, Bailey Road, Patna- 800014, through its authorised signatory Manoj Ranjan Satapathy, Senior Manager (Legal) S/o Late Jivan Ranjan Satapathy R/o Flat No. 201, Shivanjali Enclave, Shukla Colony, P.S- Hinoo, Distt- Ranchi.

.... Petitioner

Versus

1. The State of Bihar
2. Upendra Narayan S/o Late Mangal Prasad, Resident of Pandit Hata, Ward No. 2, P.O+ P.S- Chakradharpur, District- Singhbhum West, Jharkhand.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. N. K. Agarwal, Sr. Advocate
Mr. Ratnakar Pandey, Advocate
For the State : Mr. Anil Kumar Singh-1, APP
For the Opposite Party no.2: Mrs. Soni Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-07-2017

Heard Mr. N.K. Agarwal, learned Senior Advocate for
the petitioner, Mr. Anil Kumar Singh, learned Additional Public
Prosecutor for the State and Mrs. Soni Srivastava, learned Advocate
for the opposite party no.2.

2. This application under Section 482 of the Code of
Criminal Procedure has been filed for quashing of the entire
prosecution of Complaint Case No.2971(C) of 2011 including the
order dated 12.04.2013 passed by the learned Judicial Magistrate-1st
Class, Patna whereby cognizance of the offences punishable under



Sections 418 and 427 of the Indian Penal Code has been taken and processes have been issued.

3. The complainant-opposite party no.2 has filed the complaint petition before the learned Chief Judicial Magistrate, Patna against (1) Vodafone Essar Spacetel Limited, Bihar Circle through its Managing Director, (2) Chairman, Vodafone Essar Spacetel Limited, (3) Mr. Shashi Ruia, Chairman, M/s Essar Group, and (4) Mr. Prashant Ruia, Vice Chairman-cum-Managing Director, M/s Essar Group with the allegations that the accused persons approached to the father of the complainant in March, 2008 and offered for installation of mobile tower on his land admeasuring area 2530 sq. ft. situated in ward no.2, Thana no.68, Mauza-Chakardharpur, P.S.-Chakardharpur, District-West Singhbhum, Jharkhand. The complainant's father accepted the offer of the accused company and handed over the documents relating to the title of the said land for their verification and satisfaction. The accused persons after proper verification and full satisfaction, proposed to execute an agreement for installation of the mobile tower on the said land. Hence, an agreement was executed on 02.05.2008 between the complainant's father and the accused persons. Thereafter, the accused persons took possession of the aforesaid premises on 02.05.2008 and brought various construction machineries on the said premises of the



complainant for installation of mobile tower. It is alleged that the accused persons without obtaining permission from complainant's father cut down eight trees located in the abovesaid premises and demolished the pucca verandah, generator room and boundary wall. Subsequently, the father of the complainant was intimated on 28.04.2009 that the company had abandoned its plan. It is alleged that the complainant wrote several letters to the accused persons seeking clarification for their conduct and to compensate the damage caused by them, but no heed was paid to the request made by the complainant.

4. On the basis of the aforestated allegations, the complaint was filed under Section 406, 420, 427, 379 and 504 of the Indian Penal Code.

5. The aforesaid complaint was made over to the court of Judicial Magistrate-1st Class, Patna for inquiry under Section 192(1) of the Code of Criminal Procedure. Besides the statement of the complainant recorded on oath, statements of two witnesses were also recorded under section 202 of the Cr.P.C. in course of inquiry.

6. After holding inquiry under Section 202 of the Code of Criminal Procedure, the learned Magistrate vide order dated 12.04.2013, summoned only the petitioner-company under Sections 418 and 427 of the Indian Penal Code through its Managing Director



named in the complaint petition.

7. It is contended by Mr. N.K. Agarwal, learned Senior Advocate appearing for the petitioner that the allegations made in the complaint petition regarding removal of trees etc. are all false and concocted. He has submitted that the petitioner has been granted license under Section 4 of the Indian Telegraph Act, vide a license agreement dated 05.12.2016, entered into with the Department of Telecommunication to install, maintain and operate mobile cellular telecommunication service and in pursuance of which the company is engaged in providing mobile telecommunication services in the State of Bihar and Jharkhand. He has submitted that the petitioner on account of being granted the aforesaid license by the Government of India had offered his site to petitioner-company for installation of cellular tower. The non-acceptance of the same was duly conveyed to the opposite party no.2, vide petitioner's letter dated 24.08.2009. He has submitted that it is true that initially the petitioner-company had agreed to install its mobile tower on the said premises based on representation of complainant's father having clear and undisputed right and title over the said premises, but during the course of verification of right and title, the petitioner-company found objection of local authority and taking into consideration those objections, the petitioner-company had no option but to cancel the



proposal of complainant's father for technical reason of not having clear and uninterrupted right and title over the premises and the same had been duly communicated, which is evident from para 14 of the complaint petition itself.

8. Mr. Agarwal, learned Senior Advocate has submitted that at best it is a case of breach of agreement which would not attract the ingredients of the offences alleged. According to him, the criminal prosecution has been launched with ulterior motive in order to blackmail the petitioner.

9. Mr. Anil Kumar Singh, learned Additional Public Prosecutor appearing for the State submitted that there is no error in the impugned order passed by the court below. He has submitted that the allegations made in the complaint clearly attract the ingredients of the offences alleged. According to him, as the witnesses examined in course of inquiry, have supported the allegation, summoning of the petitioner-company, can not be held to be bad.

10. Mrs. Soni Shrivastava, learned Advocate appearing for the complainant-opposite party no.2 has submitted that even though the complainant may have a remedy in civil law, the same would not disentitle him from prosecuting the petitioner in a criminal case, as the ingredients of the offences alleged are clearly attracted. She has submitted that the defence taken by the petitioner



cannot be made a ground for quashing the order of cognizance. According to her, the defence of the petitioner can be appreciated by the learned Magistrate at the appropriate stage during trial and the instant application under Section 482 of the Code of Criminal Procedure for interdicting the complaint at the threshold is premature.

11. I have heard learned Advocates for the parties and perused the record.

12. I find substance in the argument advanced by Mr. Agarwal, learned Senior Advocate for the petitioner. There is no dispute to the fact that there was an agreement for installation of cellular tower.

13. I have perused the statement of the complainant made on oath and the deposition of inquiry witnesses. From perusal of the statements of the witnesses on solemn affirmation and the deposition of inquiry witnesses, it would be evident that the complainant has instituted the complaint for compensation in terms of money to indemnify him for the alleged loss and damages made to his property.

14. It is an admitted case of the complainant that there was an agreement between his father and the petitioner-company to which the company had agreed for installation of cellular



tower at the site offered by the complainant's father. As in the course of verification of right and title, the company found objection of local authorities and taking that into consideration, the company cancelled the proposal of complainant's father and duly conveyed it to him, in my considered opinion, such an act would never constitute any criminal offence much less the offence for which the court below has taken cognizance and issue processes. At best, it was a case of breach of agreement which would come under the purview of civil jurisdiction and, if agreed, the complainant would have availed other remedies instead of filing a complaint petition. The other part of the allegation seems to be ornamental in order to coerce the company with ulterior motive.

15. Accordingly, the impugned order dated 12.04.2013 passed by the learned Judicial Magistrate-1st Class, Patna, as also, the entire prosecution arising from Complaint Case No. 2971(C) of 2011, is quashed.

16. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2017
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