

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46630 of 2013

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1. Biplab Ghosh Son Of Late Jitendra Nath Ghosh Resident Of P-85,
Kannungo Park, P.S.- Yadavpur, Kolkatta- 700084

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mr. Narendra Kumar Singh S/O Sri Ram Layka Singh Proprietor of
J.M.D. Traders Having It Registered Office At Second Floor, Hotel Avanati
Building, Fraser Road, P.S. Kotwali, Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar
For the Opposite Party/s (1 & 2) : None

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN
PRASAD
ORAL ORDER

5 03-08-2017 Heard learned counsel for the petitioner.

Despite service of notice in terms of the order dated
14.08.2014 passed by a co-ordinate bench of this Court, no one
has appeared on behalf of opposite party no. 2. Learned APP for
the State is also not present, as is the general phenomenon in most
of the cases.

The petitioner in the present case happens to be a short
term employee of a company, namely, M/s Bio Start Product Pvt.
Ltd. having its registered office at 41/A, Naktala Road, Kolkata. A
complaint, giving rise to Complaint Case No. 456(C)/2005, came
to be filed in the court of learned Chief Judicial Magistrate, Patna
by one Mr. Narendra Kumar Singh, proprietor of J.M.D. Traders.



The complaint petition has been enclosed as Annexure-I of the present application.

It is the case of the complainant that under an agreement for C & F agent, executed between the complainant and the Company, a security deposit was made against the stock to be provided by the accused-company. The complainant alleged that he had deposited Rs. 4 lacs for starting the work as C & F agent of the accused-company. After getting the money, the company and accused persons, representing the company, started unexpected behaviour, like non-cooperation in smooth functioning of the business, delaying attitude towards payment of money, sales tax and putting new conditions. Irrespective of the terms and conditions settled by the accused persons caused grave inconvenience and humiliation to the complainant. The complainant further alleged that it became impracticable for the complainant, as an agent of the accused-company because the inconvenience caused to him. Ultimately, on 19.06.2004, the complainant informed the accused-company expressing his displeasure and intimated that he does not want to represent C & F agent of the accused-company and asked him to settle the account and to make payment along with his security money.

It is further placed in the complaint petition that



accused no. 2 terminated the agency of the complainant, made payment of other dues/claims of the complainant and also got transferred the stock of goods and assured the complainant to return the security money deposited with him for C & F agent to the tune of Rs. 4 lacs only within few months, but surprisingly enough has not paid the said amount till yet with malafide intention and dishonest motive for the reasons best known to him. The complainant allegedly visited at Kolkata office of the accused-company and met accused no. 2, Surajit Chakraborty, who misbehaved with the complainant. It is alleged that on 03.01.2005, when the complainant went to the office on the invitation of accused no. 2, he was misbehaved by accused no. 2 and other accused persons, who not only abused him, humiliated him, rather threatened him of dire consequences and asked him not to demand security money as it would be dangerous and harmful for his safety and health.

The complainant was examined and summons were issued to all the accused named in the complaint petition.

Learned counsel for the petitioner submits that so far as the present petitioner is concerned, he was an employee of the Company for a period of 6-8 months only and had no connection at all with the present complainant. Learned counsel has taken me



through the complaint petition in order to substantiate his argument that in fact, there is not a single statement by way of allegation against the present petitioner. No role has been assigned to him. Petitioner had worked for 6 to 8 months in the accused company as a Manager. He is aged about 76 years. He further submits that the tone and tenor of the language used in the complaint petition would suggest that it is in the nature of a civil dispute, which has been given a colour of criminal proceeding in the present case.

According to learned counsel for the petitioner it is an admitted position that the complainant was working as C & F agent and had got his money, but the grievance of the complainant is with respect to non-refund of security money. Learned counsel further submits that in Cr. Misc. No. 11771/2007 a co-ordinate Bench of this Court considered the plea of quashing of the order taking cognizance and issuance of summons in the present case at the instance of another accused, namely, Kamal Mukharjee and upon hearing the parties (there also the complainant did not appear), the Court came to a conclusion that allegations contained in the complaint petition are with respect to settlement of accounts between the parties and amounted to a civil dispute. A certified copy of the order dated 28th January, 2008 passed in Cr. Misc. No.



11771/2007 is enclosed as Annexure-3 to the present application.

Learned counsel for the petitioner submits that the petitioner was not served with the summons because the complaint did not contain his correct address, later on, the petitioner came to know about the present case.

Lastly, learned counsel for the petitioner submits that in the facts and circumstances of the case, there being no allegation at all against the present petitioner, the case is covered under one of the illustrations mentioned in the judgment of the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajanlal & Ors.* reported in *1992 Supp (1) SCC 335*. He further relied upon the judgment of the Hon'ble Apex Court in a case of *R.P. Kapur, Appellant V. State of Punjab, Respondent* reported in *AIR 1960 SC 866* and submits that without adding and subtracting anything from the complaint, no 'prima facie' case is made out against the present petitioner.

Having considered the submissions made on behalf of the petitioner and upon perusal of the records, this Court is in agreement with the opinion of the co-ordinate Bench of this Court that it is a case in the nature of civil dispute. In the complaint petition, there is no allegation against the present petitioner, the security money, if any, was deposited with accused no. 1



(Company) and there is no allegation of receipt of money and/or committing any act of cheating against the present petitioner. Learned Judicial Magistrate has taken cognizance of the offence under Section 406 and 420 of the Indian Penal Code in a routine and mechanical manner. There is no material to suggest even a prima facie case under these two sections of the Indian Penal Code against the present petitioner. The case is squarely covered by the judgment of the Hon'ble Apex Court in the case of ***Bhajan Lal*** (Supra) and ***R.P. Kapur*** (Supra).

This being the position, the order of taking cognizance dated 06.06.2005 and issuance of summons against the present petitioner stands quashed.

Application is allowed.

(Rajeev Ranjan Prasad, J.)

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