IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.27501 of 2012

Arising Out of PS.Case No. -2740 Year- 2010 Thana -null District- PATNA

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1. Sanjay Kumar Gupta, s/o Vijay Kumar Gupta, resident of Pune, Police Station Viman Nagar, Pune, District Pune, at present working as Chief Financial Officer, C/O Fresenius Kabi India Pvt. Ltd., Office at Fifth Floor, Ashoka Plaza, Pune Nagar Road, Viman Nagar, Pune-411014.
2. R. Bhagrva, s/o Kamta Shanker Bhargava, president of Bunglow No. D/27, Marigold, Kalyani Nagar, Pune, Police Station Yerwada, Pune, District Pune, previously working as M.D. & C.E.O., C/O Fresenius Kabi India Pvt. Ltd., Office at Fifth Floor, Ashoka Plaza, Pune Nagar Road, Viman Nagar, Pune-411014.

.... Petitioner/s

Versus

1. State of Bihar &
2. Sri Dilip Kumar Singh @ Dilip Kumar, S/O late Shiv Nandan Singh , Proprietor of M/S Jayanti Traders, resident of Ganga Complex, Behind A.N. College, Shiv Puri, P.S.- Shastri Nagar, District- Patna

.... Opposite Party/s

With

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Criminal Miscellaneous No. 37467 of 2012

Arising Out of PS.Case No. -2740 Year- 2010 Thana -null District- PATNA

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1. Rakesh Bhargava, s/o Kamta Shankar Bhargava, M.D. & CEO, C/O Fresenius Kabi India Pvt. Ltd., office at Fifth Floor, Ashoka Praza, Pune Nagar Road, Viman Nagar, Pune- 411014
2. Manas Ranjan Sahu, s/o Sri Purusottam Sahu, resident of Pune, Police Station-Kondhwa Pune, District- Pune, at present working as VVP Supply Chain, C/O Fresenius Kabi India Pvt. Ltd., Office at Fifth Floor, Ashoka Plaza, Pune- Nagar Road, Viman Nagar, Pune- 411014
3. S.K. Lohia, s/o Kishanlal Lohia, resident of Mumbai, Police Station- Borivili, Mumbai, District- Mumbai, working as V.P. International Business, C/O Fresenius Kabi India Pvt. Ltd., Office at 301, Wagh Apartment, 3rd Floor, 3 Park Road, Vile Parle (East), Mumbai- 400057

.... Petitioner/s

Versus

1. The State of Bihar
2. Sri Dilip Kumar Singh @ Dilip Kumar, S/O late Shiv Nandan Singh , Proprietor of M/S Jayanti Traders Resident Of Ganga Complex, Behind A.N. College, Shiv Puri, P.S.- Shastri Nagar, District- Patna

.... Opposite Party/s

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Appearance:

(In Cr. Misc. No.27501 of 2012)

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Avinash Kumar, Advocate
Mr. Ajit Kumar, Advocate

For the Opposite Party/s : Dr. Kumar Uday Pratap, APP
Mr. A. P. Prabhakar, Advocate

(In Cr. Misc. No.37467 of 2012)

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Avinash Kumar, Advocate
Mr. Ajit Kumar, Advocate
For the Opposite Party/s : Mr. Satyavarat Verma, APP
Mr. Anil Kumar Chaudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 04-10-2017

1. These applications under Section 482 of the Code of Criminal Procedure have been filed for quashing the order dated 05.02.2011 passed by the Judicial Magistrate, Patna, in Complaint Case No.2740-C of 2010 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners of Cr. Misc. No.27501 of 2012 and petitioner No.1 of Cr. Misc. No.37467 of 2012 for the offence under Section(s) 420, 406/34 Indian Penal Code and against petitioner Nos.2 and 3 of Cr. Misc. No.37467 of 2012 for the offence under Section(s) 420, 406, 323, 504/34 Indian Penal Code.

2. Prosecution case as per Complaint Petition, in short, is that the petitioners are working in Private Limited Company duly incorporated under the provision of the Companies Act, 1956, and the petitioners being the office bearers are responsible for day to day affairs of the company and, accordingly, they are legally bound to face the consequences arising from their omission and commission. It has been alleged that in the year 2003, the accused persons finding their very small presence within the

State of Bihar in terms of medicine business came in contact with the Complainant for using the strong network and finance of the third party. The accused persons in the very inception of coming closer with the Complainant had a very oblique motive to use the Complainant money, infrastructure and his network for their gain. They approached the Complainant in the month of July, 2003, in his office and requested to become C & F Agent of their company for Bihar and Jharkhand for their generic products and specialty product on commission structure of 6.5% and 2.5% respectively. The accused persons persuaded the Complainant for entering into agreement on commission basis. They assured the Complainant for providing all logistic support for the development of the business as per the advice of the Complainant. The Complainant in the backdrop of agreement executed between the Complainant and the accused persons was appointed as C & F Agent for the purpose of carting, storing and forwarding the medical products of the Company within the State of Bihar & Jharkhand. He was asked to deposit Rs.10,00,000/- as security deposit. Agreement was executed from time to time for promoting the business of the company within the State of Bihar & Jharkhand, but due to bad policy of the accused persons, growth of product of the company within the State of Bihar and Jharkhand could not reach to desired level. The accused persons despite several communications having been made from different channels dishonestly tried to misappropriate the amount of the Complainant causing great financial loss to the Complainant. The accused persons were having intention to cheat the Complainant from the very beginning and this was the reason why they were changing the agreement(s) as per their convenience. The Complainant has alleged that final signed copy of the agreement was sent by the accused persons on 20.03.2009. The accused persons had sent a mail to the Complainant demanding bank guarantee of Rs.10 lacs for C & F operation of Bihar even before receipt of the agreement. Aforesaid clause was not mentioned in the agreement dated 21.08.2008. Such action of the accused shows only their greedy nature. The petitioners at the time of the agreement in the year 2008 promised the Complainant that he will get specialty commission on the sale of products of the company, whereas, during course of business the accused persons played fraud upon the Complainant and stated that he will get only specialty commission which was totally criminal breach of trust. The accused persons intentionally not supplied sufficient medicines and other products, which were demanded by the prospective buyers with a view to cause wrongful loss to the Complainant. The Complainant due to ill motive and wrong intention of the accused persons suffered loss to the tune of Rs.45 lacs. Accused Nos. 4 and 5 along with unknown persons came to the office of the

Complainant situated at Patna on 04.09.2010 at 7.30 PM and forcibly took away some valuable documents. In this way, the employees of the Complainant were confronted with the accused persons, but they were assaulted and abused by the accused persons. The accused persons also broke the glass panel of the window and one TV, which was kept at the waiting room. The accused persons had threatened the staff of the Complainant and abuse them without any reason. The accused persons have falsely represented before the Complainant and there by induced him to enter into the agreement just with a view to harass and blackmail the Complainant and they took money from the Complainant on one pretext or another, but never tried to discharge their responsibilities. The accused persons intentionally not followed the terms and condition of the agreement and created hurdles and problems in the way of the Complainant. The conduct of the accused persons is sufficient to prove that they have wrong and criminal intention right from the beginning. They have committed offence of cheating as well as criminal breach of trust.

3. The Court below during enquiry recorded Solemn Affirmation of the Complainant and statement of three other witnesses. The Court below after perusing the Solemn Affirmation of the Complainant, statement of the witnesses recorded during enquiry and the documents filed by the Complainant found *prima* *facie* case against the accused persons for the offence under Section(s) 420, 406, 323, 504/34.

4. Counsel for the petitioners has submitted that Clause 62 of the C & F Agent Agreement provides for arbitration mechanism for resolving disputes between the parties. Clause 61 of the agreement provides that Court at Pune shall exclusively adjudicate the dispute between the parties and no other Courts shall have any jurisdiction. As per Deed of Separation and Settlement, the company repaid Rs.5 lac to the Complainant out of Rs.10 lac and retained a sum or Rs.5 Lac as security deposit of the Complainant and C & F Agent for standard solution business. The company is ready to refund rupees five lacs subject to completion of certain formalities as mentioned in para 18 and 19 of the petition. The present complaint has been filed on account of dispute arising out of agreement. The Complainant has tried to settle civil dispute by way of present criminal case.

5. Counsel for the Opposite Party No.2, on the other hand, argued that the accused persons intentionally did not supply sufficient medicines and other products, which were demanded by the perspective buyers with a view to cause wrongful loss to the company. The accused persons were having intention from the beginning and this was the sole reason they were changing agreement(s) at any moment as per their convenience. Final signed copy of the agreement was sent by the accused persons only on 20.03.2009 and even before receipt of the agreement accused persons sent mail to the Complainant demanding bank guarantee of Rs.10 lacs for C & F operation of Bihar and Jharkhand, which was not the clause mentioned in the agreement dated 21.08.2008.

6. Counsel for the petitioners has relied upon a decision of the Supreme Court in the case of ***G. Sagar Suri vs. State of UP*** reported in ***(2000) 2 Supreme Court Cases 636***, and in the case of ***Inder Mohan Goswami Vs. State of Uttaranchal*** reported in ***(2007) 12 Supreme Court Cases 1*** and has argued that while exercising power under Section 482 Cr. P.C, 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 pressurize the accused.

7. On the other hand, counsel for Opposite Party No.2 has relied on the judgment of the Supreme Court in the case of ***Md. Ibrahim Vs. State of Bihar*** reported in ***(2009) 8 SCC 751.*** The Hon'ble Supreme Court has laid down in the aforesaid judgment that there is growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes.

8. In the present case, from perusal of the allegation in the Complaint Petition, Solemn Affirmation of the Complainant as well statement of the witnesses recorded during enquiry and also the documents filed on behalf of the Complainant as mentioned in the impugned order, this Court finds that there are ingredients of the offences in which *prima facie* case has been found by the learned Magistrate vide impugned order. In fact, the petitioners have admitted in para 18 of the petition of Cr. Misc. No.27501 of 2012 that the Company is withholding amount of Rs.5 lacs out of Rs.10 lac deposited by the Complainant as security deposit with the petitioners. The Company is ready to refund the security deposit of Rs.5 lac to the Complainant subject to formalities as mentioned, in detail, in para 18 and 19 of the aforesaid petition.

9. The Complainant has specifically alleged in the Complaint Petition that the company never supplied the product as per the order nor increased the business volume as promised on account of which the Complainant suffered huge financial loss. Growth of the product of the company within the State of Bihar and

Jharkhand was not good and the sale never reached the desired level due to bad business policy of the accused persons. All these acts of the accused were pre-planned, afterthought and after hatching a conspiracy to cause wrongful loss to the Complainant.

10. The Complainant has specifically alleged that although agreement was signed in the month of August, 2008, whereas, on 22nd August, 2008, the Managing Director and CEO of the Company had written to his Zonal Sales Manager to close down the operation of Bihar C & F. By this time, the Complainant had invested huge amount and also energy for the work of the accused persons. The accused persons were having an intention to cheat the Complainant right from the beginning and this was the sole reason that they were changing the agreements at any moment as per their convenience. Final signed copy of the agreement was sent by the accused persons only on 20.03.2009, but even before receipt of the agreement accused persons sent mail to the Complainant demanding bank guarantee of Rs.10 lacs, which was not a clause mentioned in the agreement dated 21.08.2008.

11. Learned Magistrate has mentioned in the impugned order that on the basis of the Solemn Affirmation of the Complainant, statement of three witnesses recorded during enquiry as well as documents filed on behalf of the Complainant, he found *prima facie* case against the accused-petitioners of Cr. Misc.

No.27501 of 2012 and petitioner No.1 of Cr. Misc. No.37467 of 2012 for the offence under Section(s) 420, 406/34 Indian Penal Code and against petitioner Nos.2 and 3 of Cr. Misc. No.37467 of 2012 for the offence under Section(s) 420, 406, 323, 504/34 Indian Penal Code.

12. Therefore, this Court does not find any illegality in the impugned order dated 05.02.2011 passed by the Chief Judicial Magistrate, Patna, in Complaint Case No.2740-C of 2010.

13. Accordingly, both the applications are dismissed.

14. The Trial Court is directed to proceed with the trial in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	**AFR**
CAV DATE	**03-08-2017**
Uploading Date	**07-10-2017**
Transmission Date	**07-10-2017**