IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44648 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

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1. Sanjay Shukla, Vice President Operation, Hindustan Media Ventures Ltd (HMVL), Patna, Son of Late R.R. Shukla R/o HT House, 18-20, KG Marg, P.S-Barakhambha, New Delhi-110001
2. C. Natrajan, G.M., Sales, H.M.V.L. Patna, son of Late K. Chandrashekharan R/o Budha Marg, P.S.-Kotwali, District-Patna
3. Diwakar Bhardwaj, Senior Manager, Hindustan Media Ventures Limited, Patna, Son of Shri Subhash Chandra Singh, R/o Budha Marg, P.S.-Kotwali, District-Patna-800001
4. Vinay Shankar Jha, Senior Accountant, Hindustan Media Ventures Limited, Patna, son of Late Abhay Kant Jha R/o Lower Nath Nagar, Near Parvatiya Chowk, P.S.-Vishwavidhalaya (University), District-Bhagalpur

.... Petitioners

Versus

1. The State of Bihar
2. Ravindra Kumar Singh, Son of Late Kapildeo Singh R/o Village + P.O.-Chhapra (Dahiyawan Tola), P.S.-Chhapra Town, District-Chhapra (Saran)

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Sr. Advocate
For the Opposite Party No.2: Mr. Rabindra Kumar Tiwary, Advocate
For the State : Mr. Uma Shankar Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 04-05-2017

Heard Mr. Akhileshwar Prasad Singh, learned Senior Advocate appearing on behalf of the petitioners, Mr. Uma Shankar Prasad Singh, learned Additional Public Prosecutor for the State and Mr. Rabindra Kumar Tiwary, 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 order dated 26.04.2013 passed by the learned Judicial Magistrate-1st Class, Saran, Chapra in Complaint Case No. C-472/2012 whereby the petitioners have been summoned to face trial for the offences punishable under Sections 406 and 420 of the Indian Penal Code.

3. According to the complainant Rabindra Kumar Singh, he was appointed as news agent of Hindustan Media Ventures Limited (for short 'HMVL') at Siwan. In this regard, an agreement was prepared between him and the authorized persons of the aforesaid HMVL. On 30th September, 2011, the complainant visited the office of HMVL at Budh Marg, Patna for payment of amount received from sale of newspaper at Siwan and he deposited the amount and, thereafter, petitioner no.4 Vinay Shankar Jha told him that petitioner no.2, G.M. Sales and petitioner no.3 Senior Manager of HMVL had called him. Thereafter, the complainant along with petitioner no.4, Vinay Shankar Jha went to the chamber of petitioner no.2 C. Natrajan where petitioner no.1 Sajnay Shukla and petitioner no.3 Diwakar Bhardwaj were present from before. The petitioner no.2 C. Natrajan told that the work of complainant is satisfactory and considering the same, all the petitioners

unanimously decided to appoint the complainant as newspaper agent of Patna Circle. They further told that for this purpose, he will have to manage some money. Thereafter, the complainant gave 41 cheques of different dates for a total amount of 48,00,000/- to the petitioner no.4 Binay Shankar Jha and also gave Rs. 5,00,000/- in cash to petitioner no.2 C. Natrajan. However, no receipt for the same was given to him. It is alleged that the petitioners never appointed the complainant as newspaper agent of Patna circle and when he asked them to appoint him newspaper agent or refund the cash and the cheques taken by them from him, no heed was paid to his request. It is also alleged that they abused and misbehaved with the complainant. They also dared him not to demand cheques or the cash amount given to them in future.

4. On the basis of the aforesaid allegations, the complaint was registered and after examination of the complainant on solemn affirmation and recording statements of two witnesses in course of inquiry conducted under Section 202 of the Cr.P.C., the impugned order dated 26.04.2013 was passed by the learned Magistrate whereby the petitioners were summoned to face trial for the offences under Sections 406 and 420 of the Indian Penal Code.

5. It is contended by the Mr. Akhileshwar Prasad Singh, learned Senior Advocate appearing on behalf of the

petitioners that there is no receipt on record that the petitioners received any cash amount from the opposite party no.2. He contended that the petitioners are senior officials of HMVL and they have been falsely implicated in the present case with ulterior motive. He contended that as a matter of fact the petitioners never ever promised the complainant who was newspaper agent of the company HMVL for Siwan alone to be made newspaper agent for Patna. The complainant had given five account payee cheques of S.B.I., Siwan Branch in favour of HMVL in course of the transaction of business.

6. He contended that the aforesaid cheques were deposited in the HDFC Bank, Patna by the HMVL, but they were dishonoured due to insufficient balance in the account of the complainant. Thereafter, a legal notice dated 25.01.2012 was sent to the complainant which had been replied by him on 13.02.2012 stating therein that the cheques amounting to Rs.21,85,000/- were not issued in discharge of any liability or debt and, thus, there is no question of committing any offence under the Negotiable Instruments Act or Section 420 of the Indian Penal Code. Since the payment was not made and finding no other remedy, the HMVL lodged a complaint through the petitioner no.4 Vinay Shankar Jha in the court of Chief Judicial Magistrate, Patna vide Complaint Case

No. 528(c) of 2012 on 22.02.2012 against the complainant of the present case.

7. It is submitted that the instant complaint on behalf of the petitioners has been filed in retaliation to the legal notice sent by the petitioners on 25.01.2012 of which reply was sent by the complainant on 13.02.2012. He contended that the present complaint has been filed by the complainant in order to create defence for himself in the aforestated complaint case in which he has been made accused.

8. On the other hand, learned counsel for the State submitted that the complainant has made specific allegations against each of the petitioners and the allegations made in the complaint do attract the ingredients of offence under Section 406 and 420 of the Indian Penal Code. He submitted that the arguments advanced on behalf of the petitioners can be looked into by the trial Magistrate at appropriate stage of the case but the same cannot be made ground for quashing of a legitimate criminal prosecution.

9. Learned counsel for the opposite party no.2 has adopted the submissions advanced by the learned counsel for the State. He has contended that on false assurance the petitioners obtained cheques for 48 lakhs and a cash amount of Rs.5 lakhs and they have misused some of those cheques in order to illegally enrich

themselves. He contended that the alleged acts of the petitioners clearly attract the ingredients of the offence punishable under Sections 406 and 420 of the Indian Penal Code.

10. I have heard learned counsel for the parties and perused the record.

11. From perusal of the record and the submissions made before the Court, it would be evident that the petitioners are Senior Executives of HMVL, a public limited company, incorporated under the Indian Companies Act, 1956. The complainant was appointed newspaper agent for the territory of Siwan by the HMVL for which he had also entered into an agreement with the HMVL on 9th December, 2009. It also stands admitted that for dishonour of certain cheques, a legal notice was issued on behalf of the HMVL on 25th January, 2012 to the complainant-opposite party no.2. The complainant had also replied to the aforestated legal notice on 13.02.2012. In the reply submitted on 13.02.2012, it is stated that five cheques for which notice was issued were never issued in discharge of any liabilities or debts. It is only after the legal notice was received and reply was sent on 13.02.2012, the instant complaint has been filed by the complainant on 17.02.2012 making an allegation that the complainant was given assurance to be appointed as newspaper agent for Patna circle and

for that very purpose, the complainant had issued cheques of Rs.48 lakhs, but the petitioners never appointed him the newspaper agent for Patna circle.

12. It is also an admitted fact that the cheques were issued in favour of the HMVL. Surprisingly, the complainant has not impleaded the company HMVL as an accused.

13. In the background of the facts mentioned above, I find substance in the argument advanced by the learned Senior Advocate appearing on behalf of the petitioners that the present complaint has been instituted by the complainant just in order to create defence for himself from being prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act for which the petitioners had already issued notice much prior to the institution of the present complaint and the complainant had also filed his reply to the legal notice issued on behalf of the company HMVL. I further find that no chit of paper has been filed by the complainant before the court of Magistrate to support the contention that any promise was ever made by the accused persons for appointing him as newspaper agent for Patna circle. The complainant has not annexed any paper even to support the fact that he had parted with any amount in order to be appointed as a newspaper agent for the Patna circle. The entire allegation made by

the complainant rests on ocular statement. On the contrary, the admitted position is that the complainant was an agent of HMVL for Siwan and was liable to make payment of sale proceeds of the newspaper in terms of the agreement between the parties.

14. At this stage, it would be relevant to note that Section 139 of the Negotiable Instruments Act raises a legal presumption in favour of the holder of the cheque. Apart from Section 139, Section 118(a) of the Negotiable Instruments Act also raises presumption in favour of the holder of the negotiable instrument unless the contrary is proved.

15. Thus, in the background of the facts of the present case when there is a strong presumption in favour of the holder of the cheque, the HMVL, launching the instant prosecution and that too after receiving the legal notice for dishonour of cheques appear to be actuated with ulterior motive.

16. In catena of judgments the Supreme Court has held that where a criminal proceeding is manifestly attended with mala fide or the proceeding is maliciously instituted with ulterior motive for wreaking vengeance on the accused it becomes imperative to exercise the powers conferred under Section 482 of the Cr.P.C. to prevent the abuse of the process of the court and otherwise to secure the ends of justice.

17. In **State of Karnataka v. L. Muniswamy & Others [(1977) 2 SCC 699]**, the Supreme Court held: *"that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed"*.

18. In **State of Haryana & Others v. Bhajan Lal & Others [1992 Supp. (1) SCC 335],** the scope and exercise of power under Section 482 of the Code of Criminal Procedure and the categories of cases where the High Court exercise its power under it relating to cognizable offences to prevent abuse of the process of court or otherwise to secure the ends of justice were set out by the Supreme Court 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 extra-ordinary 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 F.I.R. 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 F.I.R. 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."

(emphasis mine)

19. Since I have already held that the present prosecution is manifestly attended with malafide as the complaint seems to have been instituted with ulterior motive in view of the ratio laid down in the abovenoted decisions by the Supreme Court

in order to prevent the abuse of the process of the court and to secure the ends of justice, the entire complaint including the summoning order dated 26.04.2013 passed by the learned Judicial Magistrate-1st Class, Saran, Chapra in Complaint Case No.C-472/2012 is hereby quashed.

20. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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