IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33578 of 2014

Arising Out of PS.Case No. -1352 Year- 2004 Thana -MUZFFARPUR COMPLAINT CASE District- MUZAFFARPUR

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Rajeev Ranjan Rana, Son of Nand Kumar Rana, Resident of Mohalla - Brahmpura, Sanjay Cinema Road, P.S. - Brahmpura, District - Muzafarpur.

.... Petitioner.

Versus

1. The State of Bihar.
2. Murari Singh, Son of Madhaw Singh, Resident of Village - Dariyapur Kachen, P.S. - Kurhani, District- Muzaffarpur.

.... Opposite Parties.

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Appearance :

For the Petitioner	: M/s. Rajendra Narayan, Senior Advocate and Ganesh Prasad Singh, Advocate.
For the State	: Ms. Asha Kumari, A.P.P.
For the Opposite Party No.2	: None.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

CAV JUDGMENT

Date: 24-01-2018:

The petitioner has filed this application, under Section 482 of the Code of the Criminal Procedure, to quash the order dated 13.10.2004 passed in Complaint Case No.C-1352 of 2004/Trial No.1629 of 2014, whereunder the court of the Judicial Magistrate, First Class, Muzaffarpur, summoned the petitioner, on enquiry, under Section 204 of the Code of Criminal Procedure, finding prima facie case under Section 420 of the Indian Penal Code against him.

2. The facts, leading to this application, are that that the opposite party no.2 Murari Singh filed Complaint Case No.C-1352 of 2004 against the petitioner and six others, namely, Uday Kumar

Thakur, Swati Sanghi, Anjana Sanghi, Y.S. Anant, V.K. Murti and Anwar Ali Ansari to the effect that all the accused had started company in the name of Sparsh Communication Limited. On 20.06.1999, the petitioner Rajeev Ranjan Rana came at the door of the opposite party no.2 and handed over visiting card to him, saying that he is Marking Executive in the Sparsh Communication Company Limited, the head office of which is at Hyderabad and the regional office is at Patna. The petitioner gave information about the activities of the company to the opposite party no.2. Thereafter, the opposite party no.2 told the petitioner that the work could not be completed by him alone. Thereafter, the petitioner left the house of the opposite party no.2 and again came alongwith the officers of the company at the house of the opposite party no.2 and introduced the officers of the company to the opposite party no.2 and they told the opposite party no.2 that on depositing the security money of Rs.5,00,000/-, a system would be fixed attaching with satellite and the opposite party no.2 would earn at least Rs.10,000/- per month and all asked the opposite party no.2 to deposit Rs.1000/-, for registration and also to manage Rs.5,00,000/-. Thereafter, the opposite party no.2 gave Rs.1000/- to the accused, then the accused Uday Kumar Thakur issued a receipt to the opposite party no.2 in respect of receiving the aforesaid money and all the accused returned from the house of the opposite party no.2.

Thereafter, on 24.06.1999, the opposite party no.2 sent the demand draft of Rs.50,000/- issued by the Punjab National Bank in the name of the Sparsh Communication Limited Company but, after some days, the opposite party no.2 came to know that the office of the company, situated at Patna, has been closed. Thereafter, the opposite party no.2 went at Hyderabad and met the accused and made demand of money, then all the accused told the opposite party no.2 that they did not know about the money and asked him to talk at Patna Office. While the opposite party no.2 made visit of Patna and Hyderabad but not a single penny was paid to him. Thereafter, the opposite party no.2 sent the legal notice to the company on 22.03.2000 through Advocate then reply was received to the effect that the money will be returned till May-June, 2000. Thereafter, the opposite party no.2 made request on several occasions on telephone to the accused then, on 31.05.2004, one account payee cheque dated 30.04.2004 of Rs.25000/- was received to him but the remaining amount Rs.26000/-, in spite of much persuasion by the opposite party no.2, was not returned to him by the accused. As such, all the accused committed fraud with the opposite party no.2.

After recording the statements on solemn affirmation of the opposite party no.2 and the statements of the witnesses, in course of enquiry under Section 202 of the Code of Criminal Procedure, the learned Judicial Magistrate, First Class, Patna, through the impugned order summoned the accused-petitioner under Section 204 of the Code of the Criminal Procedure, arriving at the conclusion that prima facie case is only made out only against the accused-petitioner.

3. Mr. Rajendra Narayan, learned senior counsel appearing on behalf of the petitioner, submits that the complaint case filed by the complainant/opposite party no.2 is misconceived in law and even on admitting facts, as detailed in the complaint petition, no offence under Section 420 of the Indian Penal Code is made out against the petitioner. As such, the impugned order summoning the petitioner is wholly illegal. Further submission is that the Sparsh Communication Private Limited having its registered office at Hyderabad was engaged in dealing with the business of Software Development and Mobile Application Development of which the accused no.3 Swati Sanghi and the accused no.4 Anjana Sanghi were the Director and Managing Director at that time. The petitioner having the degree of Master in Business Administration (MBA) was appointed by the said company in the month of September 1998 on the post of Marketing Executive and he worked in the said company till April, 2001. As such, the petitioner being the employee of Sparsh Communication Company Private Limited cannot be held responsible regarding the non-payment of Rs.26000/- to the complainant/opposite party no.2, as Rs.1000/-

and Rs.50000/- were paid in the name of the company by the complainant/opposite party no.2. Moreover, the Sparsh Communication Private Limited has not been made party in the complaint petition by the opposite party no.2 and, therefore, the petitioner cannot be held liable in any manner for any mistake or breach of contract committed by the company and placed reliance on a decision of the Hon'ble Apex Court in the case of **S.K. Alagh Versus State of Uttar Pradesh and Others {(2008)5 Supreme Court Cases 662}.**

4. From bare reading of the complaint petition, it is apparent that the complainant/opposite party no.2 had given Rs.1000/- for registration in the company and the receipt regarding the said amount was issued by the accused no.2 Uday Kumar Thakur and Rs.50000/-, was also paid by the complainant/opposite party no.2 through demand draft issued by the Punjab National Bank in favour of the Sparsh Communication Private Limited and Rs.25000/- was returned by the company through account payee cheque to the complainant/opposite party no.2 and remaining Rs.26000/- of the complainant/opposite party no.2 is said to be due against the company.

5. Section 420 of the Indian Penal Code deals with the cheating and dishonestly inducing delivery of property. To constitute an offence under Section 420 of the Indian Penal Code, two ingredients are required; (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived.

6. The facts of the present complaint case clearly suggests that there was transaction in between the complainant/opposite party no.2 and the company, i.e., Sparsh Communication Private Limited, of which petitioner was Marketing Executive and Rs.50000/- was paid by the complainant/opposite party no.2 through demand draft issued by the Punjab National Bank in favour of the company and on several requests, the company sent an account payee cheque of Rs.25000/- to the complainant/opposite party no.2. As such, in my view, the *mens ria*, which is an essential ingredient to constitute an offence under Section 420 of the Indian Penal Code at the time of inducing a person deceived to deliver any property, is clearly wanting in respect to the petitioner in the present case and the offence under Section 420 of the Indian Penal Code would not attract against the petitioner. Further, demand draft of Rs.50,000/-, which is said to be given to the accused, was in the name of the company and on the request of the complainant/opposite party no.2, Rs.25000/- was paid by the company through account payee cheque to the complainant/opposite party no.2 but the complainant/opposite party no.2 has not inserted the name of the company in the accused column in the complaint petition.

In the case of **S.K. Alagh Versus State of Uttar Pradesh and Others {(2008)5 Supreme Court Cases 662},** the Hon'ble Apex Court in paragraph-19 held as under:

> "19. As, admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under section 406 of the Penal code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself."

Taking into consideration the aforesaid decision of the Hon'ble Apex Court, the prosecution of the petitioner being the employee of the company would not be vicariously liable for the acts of the company.

7. Having regards to the facts and the circumstances of the case and the aforesaid discussions, I am of the view that no prima facie case is made out against the petitioner for the offence under

Section 420 of the Indian Penal Code. As such, the impugned order, summoning only the accused-petitioner, on enquiry, under Section 204 of the Indian Penal Code, finding prima facie case under Section 420 of the Indian Penal Code against him is illegal and amounts to an abuse of the process of the court.

8. In the result, this application is allowed and the impugned order dated 13.10.2004 passed in Complaint Case No.C-1352 of 2004/Trial No.1629 of 2014 by the court of the Judicial Magistrate, First Class, Muzaffarpur, summoning the accused-petitioner, on enquiry, under Section 204 of the Code of the Criminal Procedure, finding prima facie case against him for the offence under Section 420 of the Indian Penal Code is hereby quashed.

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	16.10.2017
Uploading Date	24.01.2018.
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