IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30172 of 2013

Arising Out of PS.Case No. -173 Year- 2013 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Anil Kumar Bajaj, son of late Purshottam Bajaj, resident of 302, Venkatesh Apartment, Budh Marg, P.S- Kotwali, Town and District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Smt. Arti Rathi, wife of Sri Arun Kumar Rathi, resident of Gurhatta Hamam Road, Patna City, P.S- Khajekala, Town And District- Patna.

.... Opposite Party/s

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Appearance :
For the Petitioner/s :Mr. Subodh Kumar Jha, Advocate
Dr. Priya Gupta, Advocate
Mr. Pranav Kumar Jha, Advocate
For the Opposite Party No.1 :Mr. A. H. M. Rahman, APP
For the Opposite Party No.2 :Mr. Prabhat Ranjan, Advocate
Mr. Chandan Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
CAV JUDGMENT
Date: 10-04-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 24.05.2013 passed by the Additional Chief Judicial Magistrate, Danapur, Patna, in Complaint Case No.173-C of 2013, by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 468, 469, 470, 471, 420 Indian Penal Code.

2. As per the complaint case, the Complainant is one of the Directors of M/s Krishna Shop Extrusion Private Limited, a

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company registered under the provision of the Companies Act, 1956 having its registered office at Nasriganj within Danapur Police Station in the district of Patna. There were three Directors of the Company, namely, Smt. Arti Rathi (Complainant), Sri Anil Kumar Bajaj (petitioner) and late Dilip Rajgarhia, who died in the year 2010. Since then, there were only two Directors in the Company. The Company acquired 37 Kathas of land on which certain structures were raised and a plant was installed. The petitioner is the in-charge to run daily business of the company. He always pointed out a picture that the company was suffering recurring loss and insisted to close down the company. The Company had taken loan of Rs.6.50 Crores from the State Bank of India out of which Company has paid Rs.4.50 Crores and Rs.1.50 Crores besides interest was still due. As per constitution of the company, two Directors could hold meeting and pass resolution. The Board of Directors on 01.08.2011 consisting of the Complainant and this petitioner convened meeting and it was resolved that this petitioner being one of the Directors of the Company is authorized by the Board of Directors to negotiate for sale of land and other fixed assets of the company and to settle the bank outstanding. The petitioner was not authorized to sale the land and other fixed assets of the company or to appoint agent by executing Power of Attorney to sell the assets and properties of the

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Company.

3. The petitioner fraudulently created a document at his own, which denotes that he has been authorized by the Board of Directors in the meeting held on 01.08.2011 for sale of land and other fixed assets of the Company and to settle the bank dues. The Complainant having learnt about fabrication of Resolution of Board of Directors dated 01.08.2011, filed Title Suit No.375 of 2011 in the Court of Sub-Judge-I, Danapur, for declaration that the forged resolution was the creation of the accused and as such be declared illegal and void and the signature of the Complainant in the Minute Book be declared forged and fabricated.

4. The petitioner in spite of service of notice in Title Suit sold the suit property for a total consideration of Rs.1.85 Crores by registered sale deed and also sold the plant and machinery of the Company and deposited the sale proceeds in his personal account causing wrongful loss to the Complainant and wrongful gain to himself.

5. Counsel for the petitioner has submitted that even if allegation made in the complaint is accepted in its entirety, continuance of the proceeding would be abuse of process of the Court. The Complainant made false allegation in respect of the incident, which took place in August, 2011, by filing the present

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complaint in February, 2013, which goes to show the malafide on the part of the Complainant. The allegation made in the Complaint Petition does not constitute any criminal offence. It may, at best, be a case of civil dispute amongst two Directors of the Company, which could have been resolved through the channel of the Companies Act.

6. Counter Affidavit has been filed by the Opposite Party No.2 (Complainant) stating therein that on 01.08.2011 the Board of Directors consisting of Opposite Party No.2 as well as this petitioner convened a meeting whereby it was resolved that this petitioner is authorized by the Board of Directors **"to negotiate for sale of land and other fixed assets of the Company and to settle the Bank outstanding."** Opposite Party No.2 learnt from some source that this petitioner has fraudulently created a forged document at his own which denotes that this petitioner has been authorized by the Board of Directors vide its meeting held on 01.08.2011 **"for sale of land and other fixed assets of the Company and settle the Bank outstanding."** The facts remains that the petitioner was never authorized by the company to sell out the land and fixed assets of the Company or to execute Power of Attorney in favour of anyone for the same. The petitioner has illegally granted Power of Attorney on 21.01.2012 in favour of one Ashok Kumar, son of late Chandra Kishore Choudhary of Salimpur Ahra, P.S.-Gandhi Maidan, Patna, to

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look after and manage the properties of M/s Krishna Soft Extrusion Pvt. Ltd. and also to negotiate for sale or to execute deed of absolute sale and deposit the sale proceed in the personal account of the petitioner. The petitioner without revoking the aforesaid Power of Attorney dishonestly executed the registered Sale Deed mentioning the payment of consideration money of the land and structure to the tune of Rs.1.85 Crores in between 02.09.2011 to 20.01.2012 prior to coming in existence of the said Power of Attorney dated 21.01.2012, which clearly shows malafide intention of the petitioner, who in collusion with his henchmen planned to grab the valuable land, structure and assets of the company.

7. The Complainant having learnt about aforesaid fabrication of the forged resolution of the Board of Directors dated 01.08.2011 by the petitioner has filed Title Suit No.375 of 2011 in the Court of the Sub Judge-I, Danapur, for declaration that the forged Resolution dated 01.08.2011 is self creation of the petitioner, passed in the Minute Book of the Company be held to be illegal and void and the signature of the O.P. No.2 in the said Minute Book be declared forged and fabricated.

8. Notice was issued in Title Suit No.375 of 2011, which was duly served on the petitioner on 05.03.2012. Petitioner filed his show cause on 11.04.2012 and apprised the Court below

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that he has already sold the suit property measuring 37 Kathas land with its structure for total consideration money of Rs.1.85 Crores with M/s Jest Liqour Pvt. Ltd. through registered sale deed, but deliberately, he did not disclose the date of execution of the Sale Deed. Similarly. Petitioner also submitted in his reply that he has sold the Company's machinery and its accessories to M/s Kush Plastic Pvt. Ltd. & Silliguri Ply Products Pvt. Ltd., but the petitioner did not disclose the date of sale and particulars with regard to the goods sold in the show cause.

9. The petitioner also apprised the Court below in the show cause that one Ashok Kumar, son of late Chandra Kishore Choudhary of Salimpur Ahra, P.S.-Gandhi Maidan, Patna, has been appointed as his constituted Attorney to look after and manage the properties of M/s Krishna Soft Extrusion Pvt. Ltd. and also to negotiate for sale or to execute deed of absolute sale and deposit the sale proceeds in the account of the petitioner. The petitioner in spite of Court's notice served upon him on 05.03.2012 in Title Suit no.375 of 2011, hurriedly and dishonestly without any authority sold the valuable land, structure, fixed assets and accessories of the Company by creating forged document i.e. Resolution dated 01.08.2011 on the basis of false signature of the Opposite Party No.2 and dishonestly created forged document and also fixed assets and machinery, which

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were in running condition and duly insured by the Insurance Company for rupees eight crores. No claim was ever filed by the petitioner for the damages done to the machineries by any means before the Insurance Company nor any information to the Bank or to the police was ever given by lodging an FIR for the damages of the said machineries etc.

10. The petitioner has illegally and dishonestly sold the entire assets and property of the company in collusion with others and misappropriated the sale amount and committed offence of breach of trust as well as cheated the Opposite Party No.2.

11. The Complainant has mentioned in the Counter Affidavit that sale deed was executed by petitioner no.1 on 24.03.2012 and 26.03.2012 in complete defiance of the notice of the Court below and without any revocation of the Power of Attorney dated 21.01.2012 executed by the petitioner in favour of Ashok Kumar.

12. It has further been submitted that in the Counter Affidavit filed on behalf of the Complainant-Opposite Party No.2, the fallacy of petitioner's version is evident from the fact that in para 15 of the quashing application, he has stated that he never prepared such false Resolution dated 01.08.2011, whereby he was authorized by the Board of Directors for sale of land and other fixed assets of

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the Company to settle the Bank's outstanding, but in the show cause reply filed by him in Title Suit No.375 of 2011 in the Court of Sub Judge, 1, Danapur, Patna, he has admitted in the show cause that he was authorized by the Opposite Party No.2 to sell the assets of the Company in order to liquidate the amount of loan of the Bank and, accordingly, he sold the assets of the Company. The petitioner has mentioned in para 17 of the written statement that meeting of the Company Directors was convened and with consent of other Director, decision was taken by the Company to **"sale the entire assets of the Company in order to settle the outstanding vide Resolution dated 01.08.2011".** It was also resolved that this petitioner shall negotiate and sell the land and other assets of the company to settle the bank account. Copy of relevant extract of the show cause and written statement filed by petitioner in the Court below in Title Suit No.375 of 2011 is annexed as Annexure-J and K to the Counter Affidavit.

13. The Hon'ble Supreme Court in the case of ***Md. Ibrahim Vs. State of Bihar*** reported in ***(2009) 8 SCC 751*** has held that 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

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so, will have to be tried as criminal offences, even if they also amount to civil disputes.

14. Similarly, in the case of ***Indian Oil Corporation Vs. NEPC India Ltd. and ors.*** reported in ***(2006) 6 SCC 736,*** the Hon'ble Supreme Court has held remedy under criminal law is not barred, if allegation discloses a criminal offence even if for the act done by the accused persons civil remedy is available in law.

15. In the instant case, from the allegation made in the Complaint Petition and also the conduct of the petitioner, as discussed in detail above, this Court finds that there are sufficient ingredients against the petitioners for the offence under Section(s) 468, 469, 470, 471, 420 Indian Penal Code.

16. Section 467 Indian Penal Code provides that whoever forges a document which purports to be a valuable security shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

17. Section 471 Indian Penal Code provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.

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18. Section 470 Indian Penal Code relates to forged document.

19. Section 463 Indian Penal Code provides that whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

20. Similarly, essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

21. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy

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wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

22. Therefore, this Court does not find any illegality in the impugned order passed by the learned Court below by which the petitioners have been summoned to face trial for the offence under Section(s) 468, 469, 470, 471, 420 Indian Penal Code.

23. This application is, accordingly, **dismissed**.

24. The Court below is directed to proceed with the trial in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	**AFR**
CAV DATE	**08-02-2018**
Uploading Date	**11-04-2018**
Transmission Date	**11-04-2018**

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