

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1086 of 2015

Arising Out of PS.Case No. -557 Year- 2015 Thana -Danapur District- PATNA

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1. Mr. Nigel Charles Harris @ Naijey Harris Son of Mr. Derek George Harris President and Managing Director Ford India Pvt. Ltd. DLF Cyber City, Phase-II Building No. 10C, 3rd Floor Gurgaon-122002 Haryana
 2. Mr. Anurag Mehrotra Son of Mr. Gopalji Mehrotra Executive Director (Marketing Sales and Service) Ford India Pvt. Ltd. DLF Cyber City, Phase-II Building No. 10C, 3rd Floor Gurgaon-122002 Haryana
 3. Mr. Vijay Raina son of Late Mr. Bhushan Lal Raina Vice President (Sales) Ford India Pvt. Ltd. DLF Cyber City, Phase-II Building No. 10C, 3rd Floor Gurgaon-122002 Haryana
 4. Mr. Kaushik Prasad Son of Mr. Venkataraman V General Manager (Sales) Ford India Pvt. Ltd. DLF Cyber City, Phase-II Building No. 10C, 3rd Floor Gurgaon-122002 Haryana
 5. Mr. Lakshmi Ram Kumar Son of Mr. R. Subbaraj General Manager (Dealer Development) Ford India Pvt. Ltd. DLF Cyber City, Phase-II Building No. 10C, 3rd Floor Gurgaon-122002 Haryana
 6. Mr. Kishlay Chowdhary Son of Mr. Samaresh Bala Divisional Operating Manager (Sales & Service) Ford India Pvt. Ltd. 6th Floor, Unit # D2 Aakash Tower 781, Anandpur Kolkata- 700107
 7. Mr. Arun Prakash Mishra Son of Indrakant Mishra Regional Service Manager Ford India Pvt. Ltd. 6th Floor, Unit # D2 Aakash Tower 781, Anandpur Kolkata- 700107
 8. Mr. Ankit Gupta Son of Om Praksh Gupta Regional Sales Manager Ford India Pvt. Ltd. 6th Floor, Unit # D2 Aakash Tower 781, Anandpur Kolkata- 700107

.... Petitioner/s

Versus

1. The State of Bihar Through The Director General of Police, Bihar
2. The Senior Superintendent of Police Patna, Bihar
3. The Officer-In-Charge Police Station- Danapur Danapur
4. Mr. Manish Priyadarshi Son of Mr. Krishna Bihari Prasad Sinha Managing Director M/s. Priyadarshi Purnanand Automobiles Pvt. Ltd. Plot No.11, Near Leads Asian School Vishwashariya Nagar Nahar Par, Bailey Road Patna-801503

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Adv. Mr. Sandeep Kumar, Adv. Mr. Siddharth Sethi, Adv. Mr. Rohit Raj, Adv. Mr. Abhishek Kumar, Adv.
For the Respondent/s	:	Mr. Ajay Kumar, Adv. Mr. Amrendra Kumar, Adv. Mr. Shishir Keshri, AC to AG

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD



ORAL JUDGMENT

Date: 10-08-2018

Heard learned senior counsel representing the petitioners and learned counsel representing the State as well as private respondents.

2. This criminal writ application has been preferred for quashing the order dated 28th September, 2015 passed by learned Additional Chief Judicial Magistrate, Danapur, District- Patna, in Complaint Case No. 1145 (C) of 2015 exercising his power under Section 156 (3) of the Code of Criminal Procedure, 1973 and also to quash the resultant First Information Report vide Danapur P.S.Case No. 557 of 2015 under Sections 406, 420, 504, 468, 469, 418, 419, 304 and 120 (B) of the Indian Penal Code, 1860.

3. Learned senior counsel has centered his argument to the basic contention that a bare reading of the complaint without adding or subtracting anything out of it, the complaint/F.I.R. would not disclose even prima facie the commission of any cognizable offence. His further contention is that the complainant/informant has attempted to give a criminal colour/ cloak to a purely civil/commercial dispute, which is the subject matter of an arbitration proceeding between the parties. It is also the submission of the learned senior counsel that the criminal proceeding has been initiated only with a malafide intention to harass the petitioners who are holding the senior managerial posts in Ford India Pvt. Ltd. and are involved in the management of the



company.

4. It is submitted that in the complaint petition filed before the learned Chief Judicial Magistrate, Patna, the complainant who is private respondent no. 4 in the present writ application did not make any statement as to the compliance of the provisions of Section 154 (3) of the Cr.P.C. It is submitted that the learned Chief Judicial Magistrate erroneously passed the impugned order directing the Danapur Police Station to lodge the First Information Report. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of **Priyanka Srivastava and another vs. State of U.P. and others 2015 (3) Supreme 152** in which the Hon'ble Apex Court held that a litigant cannot be allowed to invoke the authority of the Magistrate without filing prior applications under Section 154 (1) and 154 (3) before the competent authorities.

5. It is pointed out by learned senior counsel representing the petitioners that petitioner no.1 is the President and Managing Director, Ford India Pvt. Ltd, petitioner no.2 is the Executive Director (Marketing, Sales and Service), petitioner no.3 is the Vice President (Sales), petitioner no.4 is the General Manager (Sales), petitioner no.5 is the General Manager (Dealer Development), petitioner no.6 is the Divisional Operating Manager (Sales and Service), petitioner no.7 is



the Regional Service Manager and petitioner no.8 is the Regional Sales Manager of Ford India Private Limited and all these petitioners are posted either at Gurgaon or at Kolkatta. The private respondent no.4 is the Managing Director of M/s. Priyadarshi Purnanand Automobiles Private Limited.

6. A copy of the complaint petition which is the basis of the First Information Report (in short 'F.I.R.') has been placed on record as Annexure '1' to the writ application. Learned senior counsel submits that the date of alleged occurrence has been shown in the petition as the year 2007, November, 2013, December, 2013 and 30.07.2015 till date. It is the case of the complainant in the complaint petition that he happens to be a renowned businessman in the State of Bihar. He claims that he was first attached with Mahindra Motors and was involved in selling of the vehicles manufactured by Mahindra and Mahindra. He was also providing service to the vehicles. The complainant claims that since the year, 2007 he was involved in selling of the vehicles manufactured by Ford India Private Limited. It is his case that he had established and constructed office, show room, service center and body shop at the instance of the officers of Ford India Private Limited. He had also employed a large number of staffs and by using his good will he was selling the vehicles of the Ford India Private Limited since the Year, 2007. It further states that as per



the agreement with the Ford India Private Limited, in order to run the business smoothly there was an arrangement for financial assistance through Tata Finance Company.

7. It is alleged that by conspiring with other employees of the Ford Company, the accused, Sri. Kishlay Choudhary, Divisional Operating Manager (Sales), got published one advertisement showing that the Ford Vehicle will be delivered to the customers in the State of Bihar at 0% payment. According to the complainant, on going through such advertisement many people started coming to the complainant for purchase of the vehicle on 0% payment but when the customers were informed by the employees that there is no such policy of the Company and in case any such policy will be made available to the complainant the same will be provided to the customers, the customers were getting agitated and they had indulged in abuse and were sometimes prepared to enter into scuffle and assault. This, according to the complainant has caused him individual and business loss.

7.1. It is further alleged in the complaint petition that when the complainant informed about the act of Sri. Kishlay Choudhary to the other senior officers of the Ford India Private Limited then they came to know about this act of Kishlay Choudhary. At this stage, the complainant says that in December, 2013 he had sent demands for



supply of Echo Sports Car but the Company did not make available the Car and instead of that they sent Ford Figgo Cars which had no sale or insignificant sale in the State of Bihar. The allegation is that with an intention to cause loss to the Company and the private respondent and its Directors the Ford Company had conspired and had given effect to the aforesaid act. It is alleged that the Ford Company has indulged in fabrication of documents and has committed fraud with the Company of the complainant and its Directors which has caused personal, mental, physical and business loss and damages to the complainant.

7.2. In the complaint petition it is further alleged that some of the senior officers of the Company (accused) of Ford India Private Limited entered into a conspiracy with an intention to damage the business of the petitioner and with an intention to confer benefit upon the dealer “Prema Ford” they threatened the complainant that unless their personal necessities are fulfilled, the dealership of the informant will be in danger. It is alleged that on 30.07.2015, the accused persons tried to mislead the Ford Company and published an information in the newspaper saying that people may approach the newly authorized dealer “Prema Ford” whereas, no such information was given to the complainant.

7.3. Lastly the complainant has alleged that because of the



offences committed by the accused persons, the Company of the complainant has suffered a damage/loss to the extent of Rs.29,84,37,000/- till date and a sum of Rs.31,00,000/- is the monthly loss amount to the complainant. It is alleged that because of this Act of the accused one of the Directors, namely, Smt. Manju Sinha died of cardiac arrest. The complainant alleged that he had given the information to the local police station on 22.08.2015 but the police station refused to lodge the First Information Report against the accused persons.

8. Learned senior counsel for the petitioner has drawn the attention of this Court towards some admitted and uncontroverted documents placed on the record to the writ application. Annexure 2 series is Dealer Sales and Service Agreement (DSSA) between the Ford India Private Limited and Priyadarshi Purnanand Automobile Private Limited. The terms and conditions on which the dealership agreement has been executed are not in dispute. Clause 14 of the agreement which has been pointed out in course of argument, deals with dispute resolution process. According to Clause 14 (a) the Company and the Dealer agreed to minimize the potential for disputes between them however in case any disputes occur which cannot be resolved in normal course of business, then both the parties agreed under this Clause that the dispute resolution process would include



mediation and binding arbitration and they will be the exclusive mechanism for resolving any controversy or claim between them arising out of or relating in any way to this agreement, its creation or termination.

9. It is thus, the submission of learned senior counsel that from a bare reading of the allegations made in the complaint petition it would appear that the whole case of the petitioner is about the loss and damages allegedly caused to him due to the advertisement/publications made in the newspaper by the officers of the Ford India Private Limited and the subsequent appointment of 'Prema Ford' as a dealer.

10. Learned senior counsel has taken this Court through the minutes of the meeting (Annexure 3 to the writ application) dated 03rd March, 2015 which took place at Ford India, Gurgaon Office. This minute has been signed by Mr. Manish Priyadarshi, (the complainant/informant). The minutes of the meeting shows that in order to resolve certain issues which were going on between the parties, the complainant/informant agreed to take certain steps to fulfill his responsibility and those action were to be taken by the complainant within the stipulated period prescribed under the minutes of the meeting. According to one of the Clauses of the minutes of the meeting, if the Dealership fails to do the same, the Dealership



principal agreed to resign (effective June, 30, 2015), and Ford India will take appropriate actions as per the Dealers Sales and Service Agreement (DSSA).

11. The declaration of Mr. Manish Priyadarshi in Annexure 3 reads as under:-

“In case I Manish Priyadarshi, as the majority shareholder and director of the Priyadarshi Purnanand Automobiles Private Limited (Priyadarshi Ford- Dealership), on behalf of the Dealership fail to fulfill the above mentioned points within mentioned timelines, then I agree to cause the dealership (Priyadarshi Ford) to resign from all Ford business effective June, 30, 2015 and to perform all obligations as per DSSA.”

12. It is submitted that on June, 2015 the complainant was served with a notice by registered post alleging breach of terms and conditions of DSSA. Reference was made to the minutes of the meeting dated March 3, 2015. It is then pointed out that the complainant sent a reply to the said notice which is contained in Annexure ‘5’ series to the writ application. This is yet another undisputed and uncotovered document which shows that the complainant did not controvert the allegations of breach of the terms and conditions of the DSSA. The complainant informed the Executive of the Ford India Private Limited that he was suffering from fund crisis and thus he could arrange only Rs.1.25 Cr of additional fund during this period. He has also pointed out so many problems in



making certain payments. He had prayed for time till the month of July in order to fulfill the conditions.

13. Learned senior counsel has then placed before this Court the notice of termination dated July 27th, 2015 as contained in Annexure '6' to the writ application by which the President and Managing Director of Ford India Private Limited informed the complainant about the termination of the DSSA with effect from 15th August, 2015, in terms of Clause 13 (b) (5) of the standard provisions of the DSSA. The complainant was informed that he would not be authorized to sell or service Ford vehicles, parts, and accessories or to use the name "Ford" for business. He was asked to refrain from taking any new bookings and close all pending issues on or before the termination date.

14. The complainant, thereafter, requested the Executive Director (M.S and S) to revoke notice of termination and consider his case sympathetically. The petitioner pleaded that he had recovered from the financial setback and will take immediate steps to settle almost all the dues. The letter dated 11.08.2015 as contained in Annexure '7' to the writ application would show that the petitioner was not disputing the allegations of breach of terms and conditions of the 'DSSA', he was only seeking a sympathetic consideration and was requesting the Ford India Private Limited to revoke the notice of



termination.

15. Learned senior counsel also placed before this Court the copy of order dated 03.02.2016 passed by the learned Single Judge of this Court of 3rd Day of February, 2016 in C.W.J.C. No. 15462 of 2012, in exercise of power under Article 227 of the Constitution of India, the learned Single Judge allowed the Civil Miscellaneous Jurisdiction Application preferred by Ford India Private Limited and directed the Court below to decide the application under Section 8 of the Arbitration and Conciliation Act, 1996.

16. Yet another order dated 27.10.2016 passed in Civil Miscellaneous Jurisdiction No.1122 of 2016 has been placed before this Court to show that the learned Single Judge had set-aside the order of the learned trial Court allowing the application of the plaintiff-respondent no.1 under Order 23 Rule 1(3) C.P.C. whereby the plaintiff-respondent was allowed to withdraw the suit and to file a fresh suit. The fact revealed in the said order would show that M/s Priydarshi Purnanand Automobiles Pvt. Ltd. and ors. had filed the suit in question for a declaration that the plaintiff is a authorized dealer of Ford India Private Limited and for a further declaration that the notice of termination of Dealership dated 30th April, 2015 was invalid. The Ford India had appeared and had filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 which was rejected on



10.09.2015 but then this Court had set-aside that order in C.W.J.C. Case No.15462 of 2015. Thereafter, in order to defeat the application of Ford India Pvt. Ltd. under Section 8 of the Arbitration and Conciliation Act, 1996 the plaintiff filed an application praying for withdrawal of the suit with liberty to institute a fresh suit which was allowed by the learned Court below.

17. This order was challenged in Civil Misc. Jurisdiction No. 1122 of 2016 on the grounds that in view of the Arbitration Clause the learned Court below could not have allowed the application of the plaintiff giving him liberty to file a second suit. This Court allowed Civil Misc. Jurisdiction No.1122 of 2016 vide order dated 27.10.2016 and the learned Court below was directed to decide the application under Section 8 of the Arbitration and Conciliation Act, 1996 filed by the petitioner as directed earlier by the Court in C.W.J.C. No. 15462 of 2015. This order was challenged before the Hon'ble Supreme Court in Special Leave to Appeal (C) No (s). 5119/2017 but the same was dismissed vide order dated 03.03.2017 passed by the Hon'ble Supreme Court.

18. In the aforementioned background of the facts, learned senior counsel has submitted that now one arbitration proceeding is going on between the parties and they are fighting over their claims.

19. Learned senior counsel has relied upon the judgment of



the Hon'ble Apex Court in the case of **State of Haryana vs. Bhajan Lal 1992 Supp. 1 SCC Page 335** and on the Judgment in the case of **Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & ors.** reported in **(2007) 12 SCC Page 1**. It is submitted that a bare reading of the First Information Report shows that a purely civil and commercial dispute has been tried to be given the colour of a criminal proceeding. The entire sequence of documents available on the record, according to the learned senior counsel would show that the complainant had failed to abide by the terms and conditions of the 'DSSA' because of which the same was terminated. It is submitted that these petitioners are the senior officers of Ford India Company Limited who have acted only in accordance with the policy of the Ford India and in terms of agreement action was taken. It is, thus, submitted that the F.I.R is fit to be quashed in the interest of justice. In order to rely upon the uncontroverted documents, learned senior counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Prashant Bharti vs. State of NCT of Delhi** reported in **(2013) 9 SCC 293**.

20. On the other hand, learned counsel representing the private respondent no.4 has opposed the prayer of the petitioner by submitting that the F.I.R. discloses commission of offence and at this stage, when the case is pending investigation it would not be just and



proper to quash the F.I.R. Learned counsel representing the private respondent no.4 though admits that he has not filed any counter affidavit and the documents enclosed with the writ application are not controverted. It is also uncontroverted that prior to filing of application under Section 156 (3) in the Court of learned Chief Judicial Magistrate, Patna, no step was taken to comply with the requirement under Section 154 (3) of the Code of Criminal Procedure.

21. On behalf of the State a counter affidavit has been filed in which the Additional Superintendent of Police, Danapur has sworn an affidavit clearly stating that after institution of the police case, it has been found that the matter is basically related with the agreement of selling of Ford vehicles between Ford India Private Limited and M/s Priyadarshi Purnanand Automobiles Pvt. Ltd. The counter affidavit states that as per the investigation done by the police so far it has been prima facie found that the matter basically pertains to the civil dispute.

Consideration

22. Having heard learned senior counsel representing the petitioners, learned counsel for the State and learned counsel representing the private respondent no.4 and after going through the materials available on the record, this Court finds that a bare reading of the complaint petition which is the basis of the lodging of the F.I.R.



shows that there was a dealership agreement between the Ford India Private Limited and Priyadarshi Purnanand Automobiles Pvt. Ltd. of which the private respondent no. 4 is the majority shareholder and is controlling the affairs of the same. The unimpeached and uncontroverted documents are showing that the parties had earlier tried to resolve the issues in respect of the business activities and for that a meeting took place at Gurgaon on 3rd March, 2015. In the said meeting the private respondent no.4 gave a declaration whereunder he agreed to fulfill all the conditions which were disclosed and agreed between the parties on the said date. Annexure-‘3’ is an unimpeachable and uncontroverted document which bears the signature of the complainant with the declaration which have been quoted in Paragraph ‘10’ hereinabove.

23. On perusal of Annexure- ‘3’ it is evident that private respondent no.4 had agreed on his own to abide by the conditions within the stipulated timelines. It is also apparent from the materials available on the record that the private respondent was undergoing severe financial crisis and he could not fulfill the conditions which were agreed under the minutes of the meeting dated 03rd March, 2015.

24. It is further evident that notice of termination was served upon the Company of private respondent no.4 and thereafter, the dealership agreement was terminated by Ford India. The private



respondent requested the Ford India to revoke the termination notice again on the ground of financial constraints seeking some more time till July, 2015. This led to a dispute and the same is the subject matter of an arbitration proceeding between the parties which has been ultimately resorted to after some rounds of litigations in this Court as well as up to Hon'ble Supreme Court of India.

25. It is apparent from the materials available on the record and from the reading of the complaint petition that the whole allegation of the petitioner is about the loss and damages which he had suffered due to wrongful publication of advertisement and then appointment of new dealer Prema Ford. If these are only allegations in the complaint petition based on which the private respondent is claiming damages for his personal loss and loss caused to the Company, it may at best be a civil dispute arising out of the commercial transactions. There is nothing to infer that these petitioners have even prima facie committed an offence under Sections 406, 420, 504, 468, 469, 418, 419, 304 and 120 (B) of the I.P.C. On the face of the unimpeachable and uncontroverted documents, this Court would have no hesitation in saying that the allegations mentioned in the complaint are only afterthought and have been made only with an intention to give this purely commercial dispute a colour of criminal proceeding.



26. In the opinion of this Court, the submission of learned counsel representing private respondent no.4 saying that a prima facie case is made out from the First Information Report cannot be accepted. The investigating agency has also found that it is a case of purely civil dispute between the parties. Admittedly, they are fighting in arbitration where the notice of termination and the consequential claims by the parties are pending consideration.

27. In the opinion of this Court, this is not one of those cases which may be allowed to go on in addition to the arbitration proceeding. This case is covered under one of the exceptions laid down by the Hon'ble Supreme Court in the case of Bhajan Lal (supra). In the case of Inder Mohan Goswami (supra) the Hon'ble Supreme Court has taken note of the fact that the tendency to give a civil dispute a colour of criminal proceeding is growing sometimes, even though a dispute relates to a purely civil matter, it is tried to be given a colour of criminal proceeding.

28. This Court is of the considered opinion that the nature of allegations in the complaint petition are purely a civil dispute arising out of a commercial transactions and in the facts and circumstances of the case, it would not be just and proper to allow the private respondent no.4 to continue with the present First Information Report which will be a sheer tool of harassment against the petitioners who



all have acted in furtherance to the policy of their employer i.e., Ford India Private Limited and have taken action in accordance with the ‘DSSA’. This Court finds that all the four steps stipulated by the Hon’ble Supreme Court in the case of Prashant Bharti (supra) to determine the veracity of the prayer for quashing, are duly satisfied in the present case. The materials produced by the petitioners are such that they rule out and displace the assertions contained in the complaint petition giving rise to present F.I.R.

29. In result, the First Information Report being Danapur P.S.Case No.557 of 2015 dated 27.09.2015 is hereby quashed and the writ application is allowed.

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	AFR
CAV DATE	
Uploading Date	14.08.2018
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