IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26957 of 2016

Arising Out of PS.Case No. -20 Year- 2015 Thana -JAKKANPUR District- PATNA

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1. Dhiraj Kumar, s/o Sri Premchandra Prasad @ Sri Premchand Prasad,
2. Niraj Kumar, s/o Sri Premchandra Prasad @ Sri Premchand Prasad,
3. Premchandra Prasad @ Premchand Prasad, s/o late Jai Kishun Sah,
4. Sakuntala Devi @ Shakuntla Devi, w/o Sri Premchandra Prasad @ Sri Premchand Prasad,
5. Anju Kumari, w/o Sri Dhiraj Kumar, all residents of Bhargavi Complex, Dumvaliya, P.S. Bagaha, District- West Champarn.
6. Anil Kumar Jaiswal @ Anil Kumar, s/o late Jai Mangal Prasad Jaiswal, resident of House No.- 48, Mahnar Bazar, P.S.- Mahnar, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar
2. Munindra Kumar @ Mundrika Kumar, s/o Sri Krishna Prasad, resident of Village- Nawki Bazar, P.S.- Bagaha, District- West Champaran, at present address- C/O Ram Iqbal Rai, 2nd Floor, Changar, Ashok Nagar, P.S- Kankarbagh, Patna-800020

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. B. K. Singh Chouhan, Advocate
Mr. Santosh Kumar, Advocate
For the Opposite PartyNo.1: Dr. Mritunjay Kumar Gautam, Advocate
For the Opposite Party No.2: Mr. Bindhyachal Rai, Advocate
Mr. Ansul, Advocate
Mr. Uma Sharma, Advocate
Ms. Sagarika Vidyarthi, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 05-09-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the First Information Report of Jakkanpur P.S. Case No.20 of 2015 instituted for the offence under Section(s) 420, 465, 468, 471, 120-B Indian Penal Code as well as order of cognizance dated 07.10.2015 passed by the

Judicial Magistrate, 1st class, Patna, taking cognizance against the Petitioners for the offence alleged under aforesaid Section(s).

Heard counsel for the Petitioners, and APP for the State as well as counsel for the Opposite Party No.2.

Counsel for the Petitioners submits that order taking cognizance is bad because in terms of Section 435 of the Companies Act, it is the Special Court, who has only power to take cognizance.

Counsel for the Petitioners further submits that case between the parties relates to Company Law and for any offence alleged to have been committed with respect to the same, there is provision of Special Court and as per provision of Section 435 of the Companies Act, for the purposes of providing speedy trial of offences under this Act, the Central Government may by notification, establish or designate as many special Courts as may be necessary.

Counsel for the petitioners has further submitted that since initial order of taking cognizance was without jurisdiction, all subsequent order passed by the Court below including order rejecting petition under Section 239 Cr.P.C. are without jurisdiction.

Counsel for the Opposite Party No.2 has submitted that complaint has been filed for the criminal offences committed by the Petitioners. He has read para 12 and 20 of the Complaint Petition and submitted that specific allegations have been made against the Petitioners of committing fraud and misrepresentation in opening bank accounts by using forged signature of Ashok Kumar (PW 1) and misappropriating the money of Company. It has further been submitted on behalf of Opposite Party No.2 that plain reading of Complaint Petition will show *mens rea* of criminal offence committed by the Petitioners. The matter was properly investigated by the police. The police found the allegation against the Petitioners true, and thereafter submitted charge-sheet. The Court below has taken cognizance on the basis of materials available in case diary and allegations made in the written report.

During pendency of this application, petitioner Nos.4 and 5 have filed petition under Section 239 Cr. P. C. for their discharge, which was rejected by learned Magistrate by order dated 30.08.2016. Thereafter, Petitioner Nos.4 and 5 had filed Criminal Revision No.646 of 2016 before the Sessions Judge, Patna, which was also rejected. Petitioner Nos.4 and 5 challenged the aforesaid order passed in Criminal Revision No.646 of 2016 in this Hon'ble Court by filing Cr. Misc. No.25441 of 2017, which was also dismissed on 22.06.2017.

It is also submitted that Petitioner Nos.1 to 3 and 6 have also filed petition under Section 239 Cr. P.C. in the Court below during pendency of this application, in this Court, which was also rejected by order dated 27.05.2017.

Counsel for the Petitioners submits that order of stay of the proceeding has been passed in this case on 24.05.2017. The order-sheet of the Court below will show that the said order has been received in the lower Court on 29.05.2017 after passing of the order by the Court below on 27.05.2017 rejecting the petition filed by the Petitioners under Section 239 Cr. P.C.

All these facts have also been mentioned in the Supplementary Counter Affidavit filed on behalf of Opposite Party No.2.

This Court after hearing argument of both sides confines itself only to the consideration "whether on the basis of allegation made in the Complaint, which was sent to P.S. under Section 156(3) Cr. P.C., and the Police after investigation having found the allegation true and submitted charge-sheet, the impugned order passed by the learned Court below is without jurisdiction in terms of Section 435 of the Companies Act".

Section 435 of the Companies Act reads as follows:

> **"435. Establishment of Special Courts.** – (1) The Central Government may, for the purpose of providing speedy [trial of offences punishable under this Act with imprisonment of two years or more], by notification, establish or designate as many Special Courts as may be necessary:

> [Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.]
> (2) A Special Court shall consist of a single Judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.
> (3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge."

From plain reading of Section 435 of the Companies Act, it will appear that it confines trial of offences punishable only under this Act.

Definition given in Column No.4 of Chapter I of the Companies Act reads as follows:

> "(4) The provisions of this Act shall apply to –
> (a) companies incorporated under this Act or under any previous company law;
> (b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (4 of 1938.) or the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);
> (c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949 (10 of 1949);
> (d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003 (36 of 2003);
> (e) any other company governed by any special Act for the time being in force, except in so far as

> the said provisions are inconsistent with the provisions of such special Act; and
> (f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification."

From plain reading of the Complaint Petition, it is apparent that Complaint has not been filed under the provision of Companies Act. Complaint has been filed making allegation of commission of criminal act by the Petitioners levelling allegation in different paragraphs of the Complaint Petition including in para 12 and 20 which have been referred to by counsel for the Opposite Party No.2 of committing fraud and misrepresentation by Petitioners in opening bank accounts by using forged signature of Ashok Kumar (PW 1) and misappropriating the money of Company. The plain reading of the allegation made in the Complaint Petition discloses *mens rea* of criminal offence committed by the Petitioners.

The police after investigation submitted charge-sheet against the Petitioners finding the allegations true. Thereafter, cognizance has been taken by the learned Magistrate.

The learned Magistrate is required to see only *prima facie* case of commission of criminal offence at the time of taking cognizance. The Petitioners have also filed petition under Section

239 Cr.P.C. for their discharge during pendency of this petition, which has also been rejected.

Therefore, this Court does not find any illegality in the impugned order.

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

The Court below will proceed with the case in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	**AFR**
CAV DATE	**N/A**
Uploading Date	**15-09-2018**
Transmission Date	**15-09-2018**