

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18363 of 2014

Arising Out of PS.Case No. -1184 Year- 2013 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

- =====
1. Pawan Kumar Khetan, S/o Jagdish Prasad Khetan, resident of Mill Road, Bara Bazar, P.S. Katihar (Town), District - Katihar.

.... Petitioner/s

Versus

1. The State of Bihar,
2. Kishan Lal Agrawal, S/o Late Biswanath Agrawal, resident of Binodpur, P.S. Katihar (Town), District- Katihar.

.... Opposite Party/s

With

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Criminal Miscellaneous No. 42429 of 2014

Arising Out of PS.Case No. -1184 Year- 2013 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

- =====
1. Lalita Dutta, W/o Late Vijan Dutta, R/o Gorhi Tola, Bara Bajar, P.S. Katihar (Nagar), Distt. - Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. Kishan Lal Agarwal, son of Late Vishwanath Agarwal, R/o resident of Binodpur, Katihar, P.S. Katihar (Nagar), District- Katihar, Bihar.

.... Opposite Party/s

With

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Criminal Miscellaneous No. 39853 of 2014

Arising Out of PS.Case No. -1184 Year- 2013 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

- =====
1. Lalita Dutta, wife of late Vijan Dutta, resident of village - Gorhi Tola, Bara Bazar, P.S.- Katihar (Nagar), Distt – Katihar

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

With



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Criminal Miscellaneous No. 48150 of 2014

Arising Out of PS.Case No. -1184 Year- 2013 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

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1. Pawan Kumar Khetan, S/o Jagdish Prasad Khetan, resident of Mill Road, Bara Bazar, P.S.- Katihar (Town), District- Katihar

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.18363 of 2014)

For the Petitioner/s : Mr. Gautam Kejriwal, Advocate
Mr. Atal Bihari Pandey, Advocate

For the Opposite Party/s : Mr. Kr. Virendra Narayan, APP
(In Cr.Misc. No.42429 of 2014)

For the Petitioner/s : Mr. Arun Kumar Mandal, Advocate

For the Opposite Party/s : Mr. Anish Chandra, APP

(In Cr.Misc. No.39853 of 2014)

For the Petitioner/s : Mr. Arun Kumar Mandal, Advocate

For the Opposite Party/s : Mrs. Indu Bala Pandey, APP

(In Cr.Misc. No.48150 of 2014)

For the Petitioner/s : Mr. Gautam Kejriwal, Advocate
Mr. Atal Bihari Pandey, Advocate

For the Opposite Party/s : Mr. Md. Ansharul Haque, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 24-01-2018

1. Cr. Misc. No.18363 of 2014 and Cr. Misc. No.42429 of 2014 have been filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 20.01.2014 passed by the Judicial Magistrate, 1st class, Katihar, in C.A. Case No.1184 of 2013 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 406, 420/34 Indian Penal Code.

2. Cr. Misc. No.39853 of 2014 has been filed by



petitioner, Lalita Dutta, for grant of anticipatory bail in C.A. Case No.1184 of 2013 in which cognizance has been taken for the offence under Section(s) 406, 420/34 Indian Penal Code.

3. Cr. Misc. No.48150 of 2014 has been filed by petitioner, Pawan Kumar Khetan, for grant of anticipatory bail in C.A. Case No.1184 of 2013 in which cognizance has been taken for the offence under Section(s) 406, 420/34 Indian Penal Code.

4. It is alleged in the complaint filed by the Opposite Party No.2 that he intended to establish a school, namely, Little Flower Academy for educating children from Class Nursery to Std. V in association with one Hemant Kumar. The Complainant intended to invest the income of the school towards the social welfare activities through Mata Rani Charitable Trust. The Opposite Party No.2 (Complainant) took the ground floor of the building on lease at monthly rental of rupees four thousand from Accused No.1 (petitioner of Cr. Misc. No.18363 of 2014). Opposite Party No.2 (Complainant) spent money over the development of the infrastructure of the premises for the purpose of the school. Accused no.2 was appointed as Principal of the school on 15.12.2011. The Complainant (Opposite Party No.2) invested about rupees two lac for purchase of Bench, Desk, Black Board etc. as well as white washing and other necessary repairing of the building. The Complainant



appointed Lalita Dutta, petitioner of Cr. Misc. No.42429 of 2014, as Principal of the aforesaid school and gave responsibility to her of admission of the students in the school. The school was inaugurated on 05.01.2012 and total eight teachers were appointed and their salary was fixed.

5. Accused no.1 (petitioner of Cr. Misc. No.18363 of 2014) at the time of admission of students in the school, expressed his desire to be added as working partner of the school and not to take any rent from the school and after clarifying accused no.1 (petitioner of Cr. Misc. No.18363 of 2014) about the motive of opening of the school for social work Complainant admitted accused no.1 as working partner of the school. Accused No.1 (petitioner of Cr. Misc. No.18363 of 2014) did not give any economic help to the Complainant. School was inaugurated on 05.01.2012 and teaching work started under the leadership of Accused no.2 and other teachers.

6. After completion of one year of the school, annual accounts of the school was produced on 14.01.2013 at 5.00 PM before the accused no.2 and other members of the Managing Committee (Complainant, Hemant Kumar and other social workers). Account was produced by accused no.2 for the period between January, 2012 to March, 2013. As per aforesaid account, total



income from various source of the school was shown to Rs.16,83,000/- as mentioned, in detail, in para 8 of the Complaint Petition. It was disclosed by accused no.2 that total Rs.4,56,500/- was spent on various heads of the school as mentioned, in detail, in para 9 of the Complaint Petition and the school has earned net profit of Rs.12,26,500/-. The Complainant agreed in presence of other members and the social workers, on request of accused no.2, to allow the accused no.2 to keep the amount of net profit of the school with her and accused no.1 will give the same on demand and handed over various registers to accused no.2 as mentioned in para 10 of the Complaint Petition. The Complainant after verifying various registers found that accused nos.1 and 2 have misappropriated Rs.6,00,960/- and Rs.6,25,540/- respectively, which was the net earning of the school for the period from 10.01.2012 to 03.11.2012. It was further found that wife of accused no.1, namely, Namita Khetan, without holding any post in the school, on the direction of the accused no.1, received an amount of Rs.1,44,500/- from accused no.2 after putting signature in the diary. He also found interpolation and cutting at several places in the aforesaid diary. Amount of Rs.18,000/- was cut and written as Rs.14,000/-.

7. The Complainant made request with accused nos. 1 and 2 to return the aforesaid amount Rs.6,00,960/- and



Rs.6,25,540/- respectively so that the same may be invested for social cause in Mata Rani Charitable Trust. Both accused nos.1 and 2 assured to return the money, but they did not return the money to the Complainant and on 22.03.2013, both accused nos.1 and 2, along with other teachers, with intention to misappropriate the amount of the school, left the school and have taken away various necessary documents of the school with intention to screen the evidence and have also damaged the blackboard, banner, hoarding etc. of the school. The Complainant also learnt that both accused nos.1 and 2 have opened another private school after taking the house on rent and have cheated the Complainant and caused monetary loss to him.

8. Counsel for the petitioners has submitted that primary grievance of the Opposite Party No.2 (Complainant) pertains to accounts of the joint venture which is an issue of civil nature and civil remedy is available to the Opposite Party No.2 for rendition of the accounts. Accused no.1 (petitioner of Cr. Misc.No.18363 of 2014) was Settler of Mata Rani Charitable Trust and one Hemant Kumar along with Opposite Party No.2 was Trustee, which fact will be apparent from Annexure-2 of Cr. Misc.No.18363 of 2014. Accused no.1 (petitioner of Cr. Misc. No.18363 of 2014) has invested a sum of Rs.50,000/- in the trust as initial amount. The Opposite Party No.2 and Hemant Kumar had also invested certain



amount. The school, in question, was started by the petitioners and Opposite Party No.2 being one of the Trustee. Opposite Party No.2, in due course, started making demand of the share in the income of the school operated by the Trust which led to disruption of functioning of the school and the petitioners parted his ways from the activities of the Trust. Opposite Party No.2 called meeting of the members of the Society for settlement of account of the school and took back his share in the venture, which was unilaterally decided on 13.03.2013 by the members to put an end to the controversy amongst the members of the Trust, which would be evident from the minutes of the meeting annexed as Annexure-3 of Cr. Misc.No.18363 of 2014. The Opposite Party No.2, pursuant to such settlement of accounts by the members of the Society, received cash amount of Rs.1,06,380/- along with Accounts Register and keys of the school premises on 02.04.2013 as will appear from Annexure-4. The Opposite Party No.2 after settling the accounts unilaterally in absence of the petitioners, just for ulterior motive filed instant Complaint Case on 24.05.2013.

9. Matter was earlier sent to Mediation Centre. Report of the Mediator has been received, wherein, it has been mentioned that accused nos.1 and 2 were not ready to pay a single paisa to the Opposite Party No.2 and, therefore, mediation has failed.



10. From the order dated 22.11.2017, it appears that the cases were adjourned at the request of the counsel for the Opposite Party No.2 for filing Counter Affidavit, but none appeared for the Opposite Party No.2 on that date. However, counsel for the petitioners appeared and made argument.

11. Counsel for the petitioners has pointed out Clause 6 (j) of the Deed of Trust (Annexure-2 of Cr. Misc.No.18363 of 2014), wherein, it is mentioned as follows:

“(j) To adjust, settle, compromise, compound refer to arbitration all actions suits-claims, demands and proceedings, regarding the trust fund without being liable or answerable personally for any loss occasioned thereby.”

12. Counsel for the petitioners have submitted that in terms of the aforesaid clause of Deed of Trust, even if entire case of the Opposite Party No.2 is admitted then also Opposite Party No.2 should go for arbitration or should file suit for dissolution of Deed of Trust.

13. Counsel for the petitioners have submitted that even if it is admitted that the accused no.1 was working partner in the firm, then in that event also petitioner being one of the partner in joint venture was one of the owner of the total assets of the firm and cannot be proceeded against by a co-partner like Opposite Party No.2 on the ground of non-allocation of the surplus and



misappropriation of the partnership fund. In the light of concept of partnership ventures, one partner can never sue the other partner for misappropriation of funds of the firm because the partnership law recognizes every partner as the owner of assets of the firm and, therefore, the only remedy to a partner charging any co-partner of misusing or diverting the funds of the partnership firm has to file suit for dissolution of the partnership and rendition of accounts.

14. In the instant case, from perusal of the averments made in the Complaint Petition and also the Deed of Trust prepared between the parties, it appears that school was joint venture of Opposite Party No.2 and the Petitioner of Cr. Misc. No.18363 of 2014. The petitioner of Cr. Misc. No.18363 of 2014 was also one of the working partners with Opposite Party No.2. Main allegation levelled by the Opposite Party No.2 against the petitioners is that accused nos.1 and 2 while furnishing accounts of the school after one year have misappropriated the amount and despite assurance to refund the amount, they did not refund the amount and caused loss to the school, which was a joint venture of Opposite Party No.2 and petitioner of Cr. Misc. No.18363 of 2014. The accused no.2 (petitioner of Cr. Misc. No.42429 of 2014) was acting as Principal of the school.

15. This Court is of the view that one partner in a



firm cannot charge another for criminal breach of trust or cheating due to status of each partner in a firm being owner of assets of the firm. The only remedy available to the Opposite Party No.2 as a partner of the firm (school) is to file suit for dissolution of the partnership and rendition of accounts.

16. Similar fact is mentioned in Clause 6(j) of the Deed of Trust entered into between the Opposite Party No.2 and the partners of the firm including accused no.1 (petitioner of Cr. Misc. No.18363 of 2014).

17. Therefore, no criminal offence is made out against the petitioners on the basis of allegations made in the Complaint Petition and in the facts and circumstances of the case discussed above.

18. The Hon'ble Supreme Court in the case of *Md. Ibrahim Vs. State of Bihar* reported in *(2009) 8 SCC 751* has laid down in the aforesaid judgment that there is growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. 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 so, will have to be tried as criminal offences, even if they also amount to civil disputes.

19. In the instant case, the dispute is purely civil dispute for rendition of accounts.

20. In view of such, the impugned order dated 20.01.2014 passed by the Judicial Magistrate, 1st class, Katihar, in C.A. Case No.1184 of 2013, by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner of Cr. Misc. No.18363 of 2014 and Cr. Misc. No.42429 of 2014 for the offence under Section(s) 406, 420/34 Indian Penal Code, is hereby quashed.

21. Cr. Misc. No.18363 of 2014 and Cr. Misc. No.42429 of 2014 are, accordingly, **allowed**.

22. Since the order of cognizance dated 20.01.2014 passed by the Judicial Magistrate, 1st class, Katihar, in C.A. Case No.1184 of 2013 has already been quashed by the order passed above, Cr. Misc. No.39853 of 2014 filed by Lalita Dutta and Cr. Misc. No.48150 of 2014 filed by Pawan Kumar Kheta, for grant of anticipatory bail to them, in connection with C.A. Case No.1184 of 2013, have become infructuous.



23. Accordingly, Cr. Misc. No.39853 of 2014 and Cr. Misc. No.48150 of 2014 are dismissed having become infructuous.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	22-11-2017
Uploading Date	30-01-2018
Transmission Date	30-01-2018

