

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34768 of 2011

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Dharmendra Kumar S/O Sri Saryug Sharma R/O Mohalla - Nutan Nagar,
Mandir Road, P.S. Civil Lines, Distt. - Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Dr. Jaishree Sinha D/O Not Known to The Petitioner, Wife Of Dr. K.K. Sinha
R/O Old Jail Compound, Tower Road, P.S. Kotwali, Distt. - Gaya

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur,
Mr. Nilesh Kumar,
Mr. Pravin Kumar and
Mr. Udbhav, Advocates

For the State : Mr. Md. Arif, APP

For the O.P. No. 2 : Mr. Sanjay, Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 13-12-2018

Heard Mr. Ajay Thakur, learned counsel for the petitioner; learned A.P.P. for the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

“That, this is an application for quashing the order 11.03.11 passed by learned Judicial Magistrate 1st Class, Gaya in Complaint Case No. 256 of 2010/Tr. No. 1847/10 by which the learned Judicial Magistrate hold that prima facie case under



sections 420, 120-B IPC is made out against the petitioner and others and accordingly ordered to issue process against them as well as for quashing the entire proceeding of aforesaid complaint case.”

3. The petitioner along with four others has been made accused by the opposite party no. 2 alleging that he had good terms with the opposite party no. 2 and had persuaded her to invest in Panjon Finance (hereinafter referred to as the “Company”) and she had invested in the name of his minor son and the agreement was also executed between the parties on 14th January, 2006 and it was stipulated that shares would mature after four years when repayment would be made to the complainant by the Company. It was further alleged that upon the term expiring, despite several reminders and request to pay back the amount in terms of the agreement, the same was not done leading to filing of the present complaint. Moreover, in the complaint, it was also mentioned that earlier also a cheque issued by the petitioner was not encashed for which criminal proceedings were instituted and cognizance taken against him and he was also arrested and thereafter he was released on provisional bail upon depositing the amount in Court which was also paid by the petitioner.



4. Learned counsel for the petitioner submitted that a purely civil dispute is made out from the entire reading of the complaint and, thus, the present criminal proceeding is an abuse of the process of the court. Learned counsel submitted that the petitioner is only an employee of the Company and the liability being of the Company, he cannot be made an accused for any so called lapses on the part of the Company. Learned counsel submitted that even the courts have held that in the absence of the Company being made a party, the liability and complicity cannot be fastened on the employees/officers of the Company. In this connection, reliance was placed on the judgment of the Hon'ble Supreme Court in the case of **Aneeta Hada v. Godfather Travels & Tours (P) Ltd.** reported as **(2012) 5 Supreme Court Cases 661**, the relevant being at paragraphs no. 40, 41 and 46. Learned counsel submitted that even otherwise the petitioner does not have domain over the assets of the Company and, thus, re-payments which were required to be made by the Company, for that the petitioner cannot be said to be responsible. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of **R. Kalyani v. Janak C. Mehta** reported as **(2009) 1 Supreme Court Cases 516**, the relevant being at paragraphs no. 29 to 32.



Learned counsel submitted that the petitioner, being a mere employee of the Company, was himself a paid employee and even though he may have signed on the agreement, the same was only as a witness, which cannot fasten any criminal liability for non-performance of any of the terms of the agreement. It was submitted that in any view of the matter, the dispute is purely a money dispute which has to be resolved through the common civil law and not by invoking criminal proceeding.

5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the petitioner was the main figure in the entire episode, as he was the person who was in regular touch with the opposite party no. 2 and had persuaded her for purchase of the share of the Company. It was submitted that due to him only, the investment was made and the agreement was scribed in which he has also signed as a witness being the ASM of the Company at Gaya. Learned counsel submitted that other investments were also made in the Company solely at the instance of the petitioner, as he was the only person of the Company which the opposite party no. 2 knew and even in the past, due to non-refund of the money and non-encashment of cheques, a criminal case was instituted in



which, upon arrest, the petitioner had given money, and, thus, the complicity of the petitioner and his involvement, including criminal liability, cannot be said to be lacking. It was further submitted that the petitioner in the present case had filed a petition for anticipatory bail before the court below in which he was granted indulgence on his own undertaking that he was ready to refund whatever amount was due to the complainant in four instalments and the Court had, thus, directed for his release upon him surrendering and filing the bail bonds and paying the first instalment and also filing affidavit with regard to payment of the remaining amount in three instalments. Learned counsel submitted that even with regard to the Company not being made a party, the law is settled that the persons liable are those who are managing the affairs of the Company and the petitioner being the local Manager, who had in fact persuaded the opposite party no. 2 to invest in the Company, cannot be absolved of his liability. In this connection, reference was made to the decision of the Hon'ble Supreme Court in the case of **HMT Watches Ltd. vs. M. A. Abida** reported as **2015 (3) PLJR (SC) 25** where it has been held that the Court should not come to a conclusion, on the basis of the disputed questions of fact that the offence is not made out. Learned counsel further referred to the decision of



the Hon'ble Supreme Court in the case of **Indian Oil Corporation v. NEPC India Ltd.** reported as **(2006) 6 Supreme Court Cases 736**, the relevant being at paragraph no. 12, for the proposition that a commercial transaction dispute may have involved criminal offence. For the same proposition, reliance was placed on another decision of the Hon'ble Supreme Court in the case of **M/s Medchi Chemicals & Pharma P. Ltd. v. M/s Biological E. Ltd.** reported as **2000 (3) PLJR (SC) 56** where it has been held that under Section 482 of the Code the complaint in its entirety has to be examined on the basis of allegations made in the complaint and there should be no examination of its correctness or critical examination.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. The contention of learned counsel for the petitioner that this is a purely civil dispute, may, at the first instance appear to be attractive. However, a closer scrutiny reveals that the allegation in the complaint petition against the petitioner is that he, in the capacity of being the local Manager of the Company was responsible for persuading the complainant to invest in the Company. Further, the agreement also discloses that he has



signed as a witness and his designation has also been shown as ASM, Gaya. This is one aspect of the matter. The other more relevant aspect is as to whether any criminal offence is made out against him, from the averments made in the complaint petition as well as the conduct of the petitioner, which are relevant factors, as in criminal matters *mens rea* is an established and sound principle for the Courts to look into as to whether any criminal offence is made out against the person. Keeping in mind the same, since the allegation made in the complaint itself shows that in the past also, there was a transaction between the Company and the complainant, resulting in the petitioner issuing cheque which was not encashed and criminal proceeding was initiated in which he was arrested and then had also paid the amount, coupled with the subsequent event that in the present case, before the court below, while seeking anticipatory bail, he had agreed to pay the amount in four equal instalments and on which he later on resiled, *prima facie* and in the tentative view of the Court, indicates that the petitioner had tried to show the Company as being reliable for investment and which was relied upon by opposite party no. 2, and thereafter the trust was belied; the petitioner, cannot be given a clean chit, at this stage, by this Court as he would have to lead the evidence to show his



innocence, which he shall get full opportunity of during trial. However, at this stage, the Court, for interference under Section 482 of the Code, has to be thoroughly satisfied that from the entire evidence which has been brought on record no criminal offence is made out, which in the present case is lacking. As far as the objection of learned counsel for the petitioner that the Company has not been made a party, the same cannot be fatal to the prosecution as all the senior functionaries of the Company have been made accused and moreover, the Company being an abstract legal entity, any criminal proceeding where consequences are strictly in personal capacity, persons by name are required to be made party, which in the present case appears to have been done by the opposite party no. 2. Moreover, the Court would also refer to the decision of the Hon'ble Supreme Court in the case of **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335** in which at paragraph no. 102 various categories have been indicated where the Court would exercise its powers. The Court deems it relevant to quote the same which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power



under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, thought it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.



(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal drudge.”

7. From the above, the Court finds that the



present case does not come under any of the criteria laid down by the Hon’ble Supreme Court, which may not be exhaustive, but to a great extent covers all situations.

8. For the reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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