IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4612 of 2016

Arising Out of PS.Case No. -14201 Year- 2014 Thana -BEGUSARAI COMPLAINT CSAE District- BEGUSARAI

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1. Subhadeep Chakarborty, Son of G.D. Chakarborty, Area Sales Manager, Bajaj Auto Ltd, Regional office, Patna, Chankya Tower, R-Block Patna, Dist- Patna, having its Registered Office at Akurdi, P.S. Nigdi, Pune- 411035 (Maharashtra). .... Petitioner/s

Versus

1. The State of Bihar.
2. Mr. Abhijeet Anand, Son of Sitaram Singh, Resident of Chandra Prakash Automobiles, N.H. 31, At- Deonah, P.S.- Barauni, District- Begusarai. .... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kanhaiya Pd. Singh, Sr. Adv.
Mr. Sumeet Kr. Singh, Adv.
Mr. Binod Kumar Singh, Adv
Mr. Satendra Pd. Singh, Adv.
For the Opposite Party/s : Mr. Bijay Krishna (SPL.APP)
For the Oppostie Party No.3: Mr. Ranjan Kumar Jha, Adv
Mr. Chandan Kr. Kashyap, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

13 26-10-2018 Heard learned counsel for the petitioner as well as learned APP.

2. Supplementary counter affidavit filed on behalf of O.P. No.2 has been taken on record.

3. Petitioner has challenged the order dated 23.11.2015 passed by Chief Judicial Magistrate, Begusarai in connection with Complaint Case No. 14201/2014 whereby and whereunder the learned lower court has summoned the petitioner to face trial for an offence punishable under Section 323, 504 and 379 IPC as well as under Section 3(1) (x) of the SC/ST (POA) Act.

4. Before coming to the main issue, the history of the

litigation is to be seen at first glance. From Annexure-3 attached with supplementary counter affidavit, it is evident that complainant happens to be an employee of M/s Chandra Prakash Automobiles which was inducted as an authorized dealer on behalf of Bajaj Auto Limited. Rakesh Kumar is the proprietor of the M/s Chandra Prakash Automobiles. Dealership was acknowledged on 21.02.2011 and it was valid up to 31.3.2013. After expiry of the tenure, the effort was taken for renewal of the dealership. In the aforesaid ground, invitation was floated for new dealership, till then O.P. No.2 was allowed to continue with dealership as stop gap arrangement and during course thereof, some dispute arose, whereupon, Rakesh Kumar, the proprietor of M/s Chandra Prakash Automobiles drew Title Suit No. 464/2013 wherein the company was directed not to appoint new dealer nor to terminate the dealer-ship which the M/s Chandra Prakash Automobiles was carrying as stop gap arrangement against which Bajaj Auto Limited filed Misc. Appeal before District & Sessions Judge, Begusarai bearing Misc. Appeal No. 07/2014 and vide order dated 25.11.2015, the order passed by the learned lower court was set aside.

5. During intervening period, so many criminal/civil cases have been brought up at the end of Rakesh Kumar, proprietor of M/s Chandra Prakash Automobiles and the present one happens to be one of them (detailed under para-27 of the

petition). It is further evident that petitioner, Subhadeep Chakarborty happens to Area Sales Manager of the Bajaj Auto Limited.

6. The allegation has been alleged (Annexure-1) at the end of complainant, Abhijeet Anand (OP No.2) is that he happens to be relative of Rakesh Kumar, proprietor of M/s Chandra Prakash Automobiles and in the aforesaid background he looks after the affair of the establishment. It is further disclosed that on the alleged date and time of occurrence, while he along with witnesses, Mukesh Paswan and Naresh Paswan were engaged in cleaning the establishment, during course thereof, five persons including petitioner came over a Inova Vehicle having no registration number. They began to abuse and inquired about the proprietor Rakesh Babu in order to teach him a lesson as, he had instituted case against him. Complainant, his staff Mukesh and Naresh forbidden him whereupon, they all abused the complainant, assaulted him with fists and slaps. When Mukesh and Naresh intervened, they abused them with caste name and further threatened, that they will be taken to the street in naked condition. They have indulged in abusing by caste name against the witnesses. They have also taken away papers, file and further, threatened that instruct Rakesh to withdraw the case otherwise, he will be murdered. They have also disclosed that the owner of the company, Rahul Bajaj and Rajiv Bajaj are influential persons.

Then thereafter, all the accused persons left the place towards Begusarai.

7. Accordingly, he informed the proprietor Rakesh Babu, with whom they have gone to the local police station where they have seen Pairvikar of the accused persons under whose influence, police declined to register a case.

8. It is further evident that after conduction of enquiry under Section 202 CrPC, by the order impugned, petitioner has been summoned and that happens to be the reason behind presentation of instant petition purported to be under Section 482 CrPC.

9. Learned counsel for the petitioner while challenging the order impugned has submitted that Rakesh Kumar was appointed as a dealer in the year 2011 which was valid up to 31.03.2013. During midst thereof, there was no bitterness amongst the parties. At the fag end of the aforesaid tenure, the proprietor of Chandra Prakash Automobiles, namely, Rakesh Kumar began to take undue advantage which was objected to and in the aforesaid background, the differences cropped up. Even then, Bajaj Auto Ltd gave sufficient time by way of continuing with the dealership under the banner of stop gap arrangement after expiry of the tenure but, Rakesh Kumar indulged in anti-social activities and further, began to file case after case with ulterior motive and to substantiate the same, the relevant order-sheets, complaint

petition, the orders passed by the High Court, Supreme Court have been annexed detailing the same under para-27 of the petition.

10. Then thereafter, aforesaid Rakesh Kumar took shelter of professional man and then, creating forged and fabricated document, after expiry of the dealership in the year 2013, got this case filed. Apart from this, it has also been submitted that Annuexure-1 of the supplementary counter affidavit which happens to be deposition of one of the so alleged victim, Mukesh Paswan, did not satisfy the ingredients on its face nor justify the finding of the learned lower court. That being so, being a malicious prosecution, petition be allowed.

11. On the other hand, learned counsel representing OP No.2 has submitted that being order of cognizance, the only requirement which the court has to see, presence of *prima facie* case. The strained relationship persisting amongst the parties will not guide, at least, the present stage. Furthermore, it has also been submitted that Mukesh Paswan was an employee and for that, Annexure-2 Series has been placed. In the aforesaid facts and circumstances of the case, it has been submitted that once the court has found presence of *prima facie* case, then in that circumstance, High Court would not interfere exercising the power in terms of Section 482 CrPC.

12. In ***AIR 1992 SC 604 (State of Hariyana & Ors. Versus Bhajan Lal & Ors)*** criteria for indulgence at an initial

stage of the case has properly been identified and for better appreciation the same is quoted hereinbelow:-

> *"(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.*
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> *(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.*
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> *(3) Where the uncontroverted 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.*
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> *(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
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> *(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings 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 proceedings 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 malafide 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 grudge."

13. Recently, in ***Parbatbhai Aahir @ Parbatbhai. vs The State Of Gujarat*** reported in ***(2017) 9 SCC 841***, retaining aforesaid criteria, has magnified and explained and for better appreciation, the same is quoted below.

"16 The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(16.1) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(16.2) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(16.3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(16.4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(16.5) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(16.6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(16.7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(16.8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(16.9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(16.10) There is yet an exception to the principle set out in propositions (16.8) and (16.9) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

14. It is needless to say that differences cropped up amongst the parties after expiry of the tenure of the dealership right from 31.03.2013. It is also an admitted fact that so many criminal cases were launched at the end of Rakesh Kumar, proprietor of Chandra Prakash Automibiles and they all have been quashed. Some of the litigations even have gone before the Apex Court under SLP (Crl) No. 15036/2015 at the behest of Rakesh Kumar, proprietor of the firm against the quashing of earlier criminal proceeding which was rejected.

15. Now reverting back to the original status, at an earlier occasion, it was directed to O.P. No.2 to place the relevant documents identifying the complainant as well as Mukesh Paswan, the witness to be employee of Chandra Prakash Automobiles before termination of the dealership dated 31.03.2013. Instead thereof, by supplementary counter affidavit, format of Employees'

State Insurance Corporation has been annexed as Annexure-2 Series which did not speak with regard to name of the employer. The other annexures happens to be contribution history and the same happens to be of the month of January 2014, April 2014, August 2014 and September 2014 but without name of the employer.

16. That means to say, those documents are after the litigation cropped up amongst the parties. In the aforesaid facts and circumstances the status of the prosecution became suspicious one couple with the fact that manner of allegation in the background of previous conduct did not justify the prosecution, much less appears to be malicious proceeding whereupon, the order impugned is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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