IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.652 of 2015

Arising out of PS.Case No. 601 Year- 2014 Thana – Kotwali (Patna) District- Patna.

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Raj Kumar Agrawal, son of Late Phoolchand Agrawal, Resident of village- Dharara P.O.- Ganpatganj, P.S. Raghopur, District- Supaul

.... Petitioner

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna
3. The Senior Superintendent of Police, Patna
4. The Officer-in-Charge, Kotwali Police Station, Patna
5. M. S. Anney Joseph, W/o Shri Johny Joseph, C/o National Spot Exchange Ltd., 605-B, Ashiana Plaza, Budh Marg, P.S.- Kotwali, Town and District- Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. P.K. Shahi, Sr. Advocate,
Mr. Alok Kr. Agrawal and
Ms. Priya Gupta, Advocates.

For the State : Mr. Anil Kumar Sinha, GA 1 and
Mr. Amresh Kr. Sinha, AC to GA 1.

For the Respondent no. 5: Mr. Jitendra Singh, Sr. Advocate and
Mr. Brajendra Nath Pandey and
Mr. Tej Pratap Singh, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 18-05-2018

Heard Mr. P.K. Shahi, learned Senior Counsel assisted by Mr. Alok Kumar Agrawal, Advocate for the petitioner and Mr. Jitendra Singh, learned Senior Counsel assisted by Mr. B.N. Pandey, Advocate for the private respondent.

2. Petitioner has moved this Court for quashing of the First Information Report (FIR) being Kotwali (Patna) P.S. Case No. 601/14 dated 01.10.2014 registered under Sections 406 / 420 / 468 / 470 / 471 / 506 / 120B of the Indian Penal Code.

3. The allegations, as appearing from the written complaint made by the respondent no. 5, who is an Assistant Manager of a Company engaged in the business of procurement in commodities for buyers providing an electronic trading platform for spot contract in commodities etc., are as under.

3.1 It is alleged that this petitioner along with Smt. Pushpa Devi Agrawal and Sri Ranjit Agrawal as also Sri Dipak Agrawal and Sri Sunil Bhalotia approached the informant and one Mr. Abhay Kumar working at the Patna Office of the complainant Company. The petitioner allegedly introduced himself as the Director of Progressive Sales Pvt. Ltd. engaged in the business of Sugar Trading since 1988. The informant was given to understand that Mr. Sunil Bhalotia is the brother of one Sri Ram Bhalotia and Sri Prakash Bhalotia who were already in the business of trading through National Spot Exchange Limited (NSEL) under their Procurement Agreement. It is further alleged that the petitioner represented himself as a renowned member of Magadh Stock Exchange (MSE) being associated with Iron & Steel

Industry business in Patna.

3.2 The allegation is that during the meeting all the accused persons misrepresented that M/s Ayush Sales Pvt. Ltd. is a established entity in different trading business, particularly in Sugar Trade since 2005 and represented that their association will be beneficial. The allegation also states that the accused persons handed over a fake profile of their company depicting the aforesaid false and frivolous claims and in the said profile Mr. Ranjit Kumar Pansari was mentioned as a business partner of M/s Ayush Sales Pvt. Ltd. and Mr. Dipak Agrawal as a person for reference. This petitioner and Mrs. Pushpa Agrawal also submitted their personal Bio-Data, their PAN Card and Voter I.D. Card. In the Voter I.D. Card the father's name of Raj Kumar Agrawal has been mentioned as Jagdish Prasad Agrawal but, as per allegation, in the PAN Card his father's name was shown as Phoolchand Agrawal.

3.3 As the allegation goes on, it is stated that the complainant company signed a Procurement Agreement on 04.04.2011 with the accused company, namely, M/s Ayush Sales Pvt. Ltd. through its Director Mr. Raj Kumar Agrawal (petitioner) and the accused company made substantial business transactions with the complainant.

3.4 It is alleged that in March, 2012 the accused persons insisted for amendment in Procurement Agreement and represented that by the amended agreement the complainant company would be entitled to a profit of 1.20% out of their big order taking into consideration the purchase value. Allegedly they further induced by assuring that in case of quick procurement of sugar the corresponding invoice will be cleared in two working days instead of 20 days; thereafter the accused persons assured that they would hand over post dated cheques to ensure immediate clearance of outstanding amount accruing time to time against the payment to be made by NSEL. This led to signing of an amended Procurement Agreement dated 01.04.2012 with the present petitioner.

3.5 It is further alleged that on 25.09.2012 the accused persons placed a Procurement Order to the complainant company for one rake of sugar containing 25,500 quintals @ Rs. 3548/- per quintal to be procured from a seller and for this the complainant company made the payment. Thereafter, the complaint raised an invoice dated 03.10.2012 on the accused company. However, the accused company did not clear the invoice for Rs. 9.73 Crores even after expiry of 20 days, instead the accused company made assurances for clearing the outstanding with interest. Thereafter, it is alleged that on 01.11.2012 the accused persons placed another procurement request for 26,000 quintals of sugar @ 3363/- per quintal and assured that payment of both the invoices will be cleared simultaneously along with interest. This petitioner and one Vivek Agrawal also specified the name of the seller as M/s Athani farmers Sugar Factory Ltd. The value of sugar was Rs. 4.83 Crores but the accused persons did not make payment of the above referred two invoices.

3.6 According to the informant, this petitioner gave balance confirmation in writing dated 22.05.2013 to the complainant company with regard to total outstanding amount, they admitted liability but did not clear the payments. It is alleged that this petitioner being the authorized signatory of the accused company issued two post-dated cheques bearing no. 107426 dated 28.09.2013 for Rs. 14.50 Crores and Cheque no. 107425 dated 24.10.2013 for an amount of Rs. 2,53,19,542/-, both drawn on State Bank of India, Saharsa Katchery Road Campus Branch, Saharsa in favour of the complainant company. The cheque was duly signed and stamped by Raj Kumar Agrawal (the petitioner) as the Director of the accused company. However, when presented for payment with the bankers of the petitioner they stood dishonoured for the reasons “Insufficient Funds”.

3.7 It is further alleged that the accused persons, namely, Vivek Agrawal and this petitioner visited the complainant company on 08.11.2013 and accepted the liability of M/s. Ayush Sales Pvt. Ltd. towards the complainant company and promised to clear the outstanding amount. It is also alleged that the complainant company when contacted Dipak Agrawal to persuade the accused persons to make the payment to NSEL they did not pay any heed to the request of the informant, the informant alleges their involvement in the conspiracy and misrepresentation made at the very beginning.

3.8 The allegation that the accused persons have caused wrongful loss to the complainant and have made wrongful gain to the tune of Rs. 17.04 Crores.

3.9 On 30.08.2014 the informant was sitting with the former employee of NSEL, namely, Sri Abhay Kumar, Raj Kumar Agrawal (the petitioner), Ranjit Agrawal and Vivek Agrawal, all came to Patna Office and used abusive language and threatened of dire consequences. A copy of the First Information Report is enclosed as Annexure-1 to the Writ Application.

4. Arguing on behalf of the petitioner Mr. Shahi, learned Senior Counsel has basically taken two arguments before this Court. At first instance, his submission is that the allegations made in the First Information Report are all relating to the business transactions which had taken place within the district of Supaul and that no part of the cause of action has arisen at Patna. Learned Senior Counsel has for that purpose taken this Court through the copy of Agreement, as contained in Annexure-2, and the amended Agreement vide

Anneuxre-2/A to the Writ Application. It is pointed out that according to the Agreement, the transactions between the parties would be subject to Mumbai jurisdiction. It is his submission that in any view of the matter the F.I.R. lodged at Patna cannot be proceeded with and is fit to the quashed for want of territorial jurisdiction.

5. Another submission of Mr. Shahi, learned Senior Counsel would be that given the allegations made in the First Information Report without adding or subtracting any thing out of it the Court may easily come to a conclusion that the dispute in the present case are at best in the nature of a civil dispute. In his submission a case of purely civil nature has been tried to be given a colour of criminal proceeding. He has for this purpose relied upon the judgment of the Hon'ble Supreme Court in the case of **Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.**, reported in (2007) 12 SCC 1.

6. It has been strenuously argued on behalf of the petitioner referring to the copy of the ledger containing different transaction details from 05.04.2011 till 03.10.2013 maintained by the accused company M/s Ayush Sales Pvt. Ltd., that the parties were in the nature of commercial transactions and had been maintaining running ledger account, they were debiting and crediting the transactions and this being a simple case of commercial transaction

even if a dispute has arisen because of non-payment of some of the bills of the complainant company that would not give rise to a criminal case.

7. In order to buttress his submissions that the lodging of the present F.I.R. is nothing but an attempt to give a civil dispute the colour of criminal proceeding by making some false allegations as to abuses and threats given by the accused persons at Patna, learned Senior Counsel has further taken this court through the records to submit that earlier when the two post-dated cheques were lodged by the complainant company and stood dishonoured on presentation a complaint was made in the competent court at Mumbai and on the basis of the said complaint made, the court of learned Metropolitan Magistrate, 48 Court, Andheri, Mumbai took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881. The said case was, however, transferred by virtue of the order passed by the Hon'ble Supreme Court in the district of Supaul but now the complainant is again trying to get the said case transferred to Patna and for that a transfer petition is pending before the Hon'ble Supreme Court.

8. It is further brought to the notice of this Court that by virtue of an order passed by the Hon'ble Mumbai High Court on an application filed under the provision of the Arbitration and

Conciliation Act, 1996 an arbitration proceeding has also been initiated between the parties in which evidences have already been led and the matter is pending for argument. It is thus submitted that the First Information Report is fit to be quashed by this Court.

9. On the other hand Mr. Jitendra Singh, learned Senior counsel has opposed the application. It is submitted that lodging of a second F.I.R. in view of the fresh cause of action is always available to the informant and there cannot be a bar. The First Information Report, according to Mr. Singh, is not fit to be interfered with at this stage when the allegations made against the petitioner is still under investigation. He has again taken this Court through the contents of the First Information Report and has submitted that this petitioner being the Director and authorized signatory of a Private Limited Company, namely, M/S Ayush Sales Pvt. Ltd. had allegedly entered into a conspiracy to cheat the NSEL on whose behalf the present F.I.R. has been lodged by the private respondent. According to him, the agreement was executed only on 4th April 2011 and thereafter the amended agreement was signed between the parties on 01.04.2012, initially some transactions were going on, some of which may have been reflected in Annexures 3 and 4. However, it will appear from perusal of Annexure-4 that after getting supply of the procurements this petitioner had issued two post-dated cheques for huge amount of

over 14 crores but when those cheques were presented both the cheques stood dishonoured for want of sufficient funds. It is submitted that from the conduct of the petitioner and the manner in which after getting procurements of huge amount of over Rs. 14 crores the payments have not been made to the complainant, a reasonable and prudent person can understand that right from the beginning the accused persons had an intention to cheat the informant. It is further submitted that even though a plea has been taken that no part of cause of action has arisen within the territorial jurisdiction of Patna, such argument is liable to be rejected only by referring to the seal and signature appearing at Annexure-2. Learned Senior Counsel submits that the Agreement (Annexure-2) has been signed in presence of the Notary Public at Patna and at two places the Notary Public has put his seal and signature on both pages of the Agreement appearing at Annexure-2. It is submitted that a part of the cause of action has definitively arisen at Patna if the allegations made in the First Information Report are read out wherein it is clearly stated as to how the accused persons visited the Patna Office of the informant, abused him and threatened him of dire consequences.

10. In view of the materials available on the record learned Senior Counsel submits that this Court at this stage may not like to interfere with the ongoing investigation with the case as it would not

be just and proper to appreciate the evidences to take a view otherwise when the case is still under investigation.

11. It is further submission of learned Senior Counsel that while it is true that in appropriate cases where it is found that a civil dispute has been tried to be given the colour of criminal proceeding this Court may in exercise of its extra-ordinary writ jurisdiction quash the First Information Report but at the same time it has been settled by the judicial pronouncements of the Hon'ble Apex Court that there is no bar in launching of a criminal prosecution side by side with the civil proceeding if the facts alleged are such that it would constitute a criminal offence.

12. Having heard learned Senior Counsel for both the parties as also learned counsel for the State and after going through the contents of the First Information Report, I am of the considered opinion that it would not be just and proper for this Court to exercise its extra-ordinary writ jurisdiction to quash the First Information Report at this stage when the investigation is still going on.

13. The plea taken by Mr. Shahi, learned Senior Counsel that the F.I.R. is fit to be quashed on the ground of lack of jurisdiction on the part of the investigating authority is liable to be rejected as it appears from a bare perusal of Annexure-2 that the Agreement (Annexure-2) was signed in presence of the Notary Public and in

proof thereof the Notary Public at Patna had put his seal and signature. It is well settled that the cause of action depends upon a bundle of causes and even if a fraction of the cause has arisen within the jurisdiction of the authorities at Patna, they would be within their rights to lodge the First Information Report and investigate into the matter.

14. Further submission of Mr. Shahi, learned Senior Counsel that it is a case of purely civil dispute which has been tried to be given the colour of a criminal proceeding does not impress this Court. The nature of the allegations are clearly suggesting that according to the informant the accused persons had made the informant to believe by misrepresentation and assertions that the invoices of NSEL towards payment of huge amount of money would be cleared within a few days but soon after placing procurement orders and on receipt thereof when the petitioner issued two post-dated cheques over a sum of 14 crores both the cheques stood dishonoured. The fact remains that the complaint was filed at Mumbai in which the complaint was made with respect to dishonour of cheques and the learned Metropolitan Magistrate at Mumbai has taken cognizance of the offences under Section 138 of Negotiable Instruments Act and the said complaint is still pending, in the opinion of this Court filing of the present F.I.R. when the informant is alleging

the manner of cheating and the further cause of action of entering into the Patna Office, abusing and threatening the informant would require investigation in the matter. If the informant has lodged an F.I.R. giving the manner of cheating and the further cause of action/occurrence which had taken place at Patna then this Court would not be willing to quash the F.I.R. and to stop the investigation at the threshold. In the opinion of this Court it is not one of those cases in which the ratio of the judgment of the Hon'ble Apex Court in the case of **Inder Mohan Goswami** (Supra) would apply. The said case was being considered by the Hon'ble Apex Court in a different fact situation and a bare perusal of the facts of the said case and that of the present case would show that the allegations in the present case, if found correct upon investigation, it may constitute a *prima facie* offence for which the accused may be proceeded against in accordance with law. This, however, will be possible only after completion of investigation. Since the investigation is still pending it is in the domain of the Investigating Officer to collect evidences and take a view as to whether or not those are sufficient to proceed against the petitioner. This Court would not entertain the defence of the petitioner and shall not make any observation as regards the evidence and the quality thereof.

15. This being the position, the Court is not persuaded to

quash the First Information Report.

16. The Writ Application has no merit. It is accordingly dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	**AFR**
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