

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47966 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

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Mr. Manoj Kumar Shahi, son of Sri Ram Kumar Shahi, Resident Of Plot No. 9, Patliputra Colony, P.O. & P.S. - Pataliputra, Town And District- Patna presently working ss Operation and Maintenance Head in M/s. Viom Networks Ltd. (Formerly Known as Wireless TT-Info Services Ltd.) A Company incorporated under the Companies Act, 1956, having its registered office at D-2, 5th Floor, Southern Park, Saket Place, New Delhi - 110017, and its Circle Office at Plot No. 9, Pataliputra Colony, P.S.- Patliputra, Town & District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Bhagwan Choubey, son of late Raghunath Choubey, resident of Mohalla - Bihari Mil, Godran Road, P.S.- Grara Nawada, District- Bhojpur.

.... Opposite Party/s

with

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Criminal Writ Jurisdiction Case No. 189 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

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Sunil Kanoria, S/o Dr. Hari Prasad Kanoria, presently working as Vice Chairman and Managing Director, M/s Viom Networks Ltd., (Formerly known as Wireless TT-Info Services Ltd.) Viom Tower, Plot No. 14A, Sector 18, Maruti Industrial Complex, Gurgaon-122015.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar, Patna.
2. The Superintendent of Police, Bhojpur at Ara.
3. Bhagwan Choubey, s/o late Raghunath Choubey, residing of Mohalla Bihari Mil, Godran Road, P.S. Grara Nawada, District Bhojpur.

.... Respondent/s

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Appearance :

(In Cr.Misc. No.47966 of 2013)

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate.
Mr. Rajesh Ranjan, Advocate.
For the informant : Mr. Balmiki Pandey Bhaskar, Advocate.
For the State : Dr. Rabindra Kumar, A.P.P.

(In Cr. WJC No.189 of 2015)

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate.
Mr. Rajesh Ranjan, Advocate.
For the informant : Mr. Balmiki Pandey Bhaskar, Advocate.



For the State : Dr. Rabindra Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 05-07-2018

1. Both these applications have been filed for quashing the First Information Report of Ara Nawada P.S. Case No. 186 of 2013 dated 02.06.2013.

2. One I.A. petition has been filed in Cr. WJC No. 189 of 2015 during pendency of the petition that police has submitted charge sheet after completing investigation of the case.

3. Heard learned counsel for the petitioners, learned counsel for the informant and learned counsel for the State.

4. Learned counsel for the petitioners has submitted that in the instant case the agreement between the informant and the petitioners have already been terminated in terms of clause 3.1 of the agreement dated 8.5.2009 which provides termination of agreement by giving six month prior notice. The opposite party No. 2 (complainant) after expiry of six months has filed the present case to put pressure upon the company for continuance of the tenancy. It has further been submitted that even if allegation is acceptable at its face value, no criminal offence is made out. The allegation of non-payment of rent can never be a ground to make out a criminal case. It is at best a case of violation of terms of condition of an agreement, for which,



the remedy is under civil law.

5. Learned counsel for the petitioners has further submitted that company has not been made party in this case and, therefore, the instant criminal Proceeding is bad in law on that ground alone. He has further submitted that even after submission of charge sheet, the First Information Report can be quashed as per the decision of the Hon'ble Supreme Court reported in *(2011) 7 SCC 59 (Joseph Salvaraj A. Vrs. State of Gujarat and Others)*.

6. The allegation in the written report of the informant is that the petitioners have entered into agreement on 15.06.2009 for installation of Telecom Tower on the rooftop of their house on monthly rental of Rs.4,500/-. Another BTS was installed on the roof top under supplementary agreement dated 11.03.2010 for which Rs.8,000/- was to be paid. The company also agreed to pay Rs.2,500/- per month for maintenance as per agreement dated 15.11.2010. It is alleged in the written report that petitioners did not pay the amount as well as the amount of maintenance and a sum of Rs.4,97,000/- is due against the accused persons.

7. Learned counsel for the petitioners has submitted that terms of Clause 3.1 of Agreement dated 8.5.2009 provides termination of agreement by giving six months prior notice. The Company gave notice for termination of the agreement but the



opposite party No. 2 avoided all efforts made by the company to contact him. Thereafter, the Company has filed Title Suit No. 1136 of 2014 in the court of Sub-Judge I, Ara, seeking relief that termination of the agreement dated 8.5.2009 is valid and also to restrain the defendants from obstructing the company from removal of its equipment and goods. The said Suit is pending for adjudication.

8. From Interlocutory application filed by the petitioner of Cr. WJC No.189 of 2015, it appears that police after investigation submitted charge sheet against the petitioners for the offence under Sections 406 and 420/34 of the Indian Penal Code.

9. Learned counsel for the opposite party No. 2 has appeared and submitted that Police after investigation submitted charge sheet in the case.

10. This Court after looking into the allegation made in the written report and also hearing submission on behalf of the parties, finds that the dispute raised by the informant in the written report is at best a case of violation of terms of agreement and no *mens rea* is there for any criminal offence. Therefore, no criminal offence is made out on the basis of allegation made in the written report. The police appear to have submitted charge sheet merely on the basis of statement recorded during investigation of some of the witnesses in mechanical manner.



11. The Hon'ble Supreme Court has held in Judgment reported in **(2011) 7 SCC Page 59 (Joseph Salvaraj A. Vrs. State of Gujarat & Ors.)** "Even if charge-sheet was filed, High Court could have still examined whether alleged offences were prima facie made out from complainant's First Information Report, charge-sheet, documents, etc. or not. Purely civil dispute is sought to be given colour of criminal offence to wreak vengeance against appellant. It does not meet strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong. The appellant cannot be allowed to be subjected to rigmarole of criminal prosecution for long number of years, even when admittedly a civil suit has already been filed between the parties and same is subjudice".

12. The Hon'ble Supreme Court has succinctly held in case of **Devendra and Others Vrs. State of Uttar Pradesh and Another**, reported in **(2009) 7 SCC Page 495** at para 27 that "A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out".

13. Therefore, the criminal prosecution against the



petitioners in terms of charge sheet submitted by the police will be harassment to them and not in accordance with law and will be abuse of the process of the court.

14. Therefore, the Charge sheet submitted by the Police along with the entire Criminal Proceeding of Nawada P.S. Case No. 186 of 2013 against the petitioners, is hereby, quashed.

15. Both the applications are accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	13/07/2018
Transmission Date	13/07/2018

