

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.52880 of 2016

Arising Out of PS. Case No.-179 Year-2016 Thana- GAYA COMPLAINT CASE District-
Gaya

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1. Anirudhya Roy Chowdhary S/o Late Debal Kumar Roy Chowdhary 7B, Star Lane, PO - Beden Street, P.S. - Battala, Kolkata - 700006, (Mob No. - 9831025010)
 2. Jayanta Basu S/o - Late Nirmal Kumar Basu P - 49, Bangur Avenue, Block 'C', P.O. - Bangur, P.S. - Lake Town, Kolkata - 700055.
 3. Tapas Kumar Basu S/o Late Santosh Kumar Basu 54, Bangur Avenue, Block 'C', Flat No. - 301, P.O. - Bangur, P.S. - Lake Town, Kolkata - 700055.
 4. Asit Kumar Ghosh S/o Late Arun Kumar Ghosh 9B, Star Lane, P.O. - Beden Street, P.S. - Battala, Kolkata - 700006.
 5. Sri Deba Jyoti Maitra Son of Rabindra Nath Maitra Director of ESBI Infrastructure Company Limited, residing at 976, Sahid Hemanta Kumar Bose Sarani, P.S. Damdam, Kolkata - 700074 (West Bengal).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Parvesh Kumar Sharma S/o - Late Ram Lakhan Sharma R/o Korma, P.S. - Khizarsarai, District - Gaya.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Praveen Kumar, Advocate with Mr. Uday Pratap Singh, Advocate
For the State	:	Mrs. Archana Sinha@ Archana Shahi, Adv. with Mr. Alok Kumar Shahi, Advocate
For the State	:	Mr. Nirmal Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 17-12-2018

Heard learned counsel for the petitioners; learned APP
for the State and learned counsel for the opposite party no. 2.

2. The petitioners have filed the present application
under Section 482 of the Code of Criminal Procedure, 1973 for the
following relief:



“That this application is being filed for quashing of the order dated 02.05.2016 and other consequential orders passed by the Learned Judicial Magistrate, 1st Class, Gaya in Complaint Case No. 179/2016, cognizance under Sections 420 and 120B of I.P.C. corresponding to Trial No. 1559/2016 whereby and whereunder, the Petitioners have been summoned without adhering to provisions contained in section 201(1) and other such mandatory provisions of the Code of Criminal Procedure, 1973 (as amended upto date)”

3. A detailed counter affidavit has also been filed on behalf of the opposite party no. 2.

4. The petitioners along with 10 others are accused of having fraudulently induced the investors, including the complainant, and once the money had been deposited, of taking a decision winding up the ESBI Infrastructure Company Limited and later on despite coming up with a public notice for making repayment, the same has not been done.

5. Learned counsel for the petitioners submitted that the complaint is totally misconceived as far as they are concerned for the reason that from the entire complaint petition no offence is made out against them. Learned counsel submitted that the ESBI Group is a larger group and has many subsidiary companies connected to it. It was submitted that in the present case the allegation is specifically against the ESBI Infrastructure Company



Limited and the allegation being that the money was deposited by the complainant and thereafter in the year 2015 suddenly there was a decision to close the Company and when the complainant went at the place where it was shown that the due amount would be returned, as per the terms of the investment, a different company was functioning from there and, thus, the allegation is that fraud has been committed. Learned counsel submitted that the composition of the ESBI Infrastructure Company Limited as obtained from the Ministry of Corporate Affairs, Government of India on 21.10.2016 would show that none of the petitioners were Director in the Company. It was submitted that the allegation is with regard to the closure of the Company in the year 2015 and the certificate shows that right from 2009-2012, other three persons were the Directors and not the petitioners. It was further submitted that the petitioners are in no way connected with the affairs of the ESBI Infrastructure Company Limited and only because of the larger connection with the ESBI Group, they have been made accused. Learned counsel submitted that the present is an abuse of the process of the Court as criminal proceedings lead to serious penal consequences which would personally affect the petitioners for no fault of theirs.



6. Learned APP and learned counsel for the opposite party no. 2 submitted that from the same premises the other ESBI Companies were also running and even the certificate issued with regard to the investment has the signature of petitioner no. 1. Learned counsel submitted that various enquiries, pursuant to even orders of the Court are going on against the functioning and fraud committed by the ESBI Companies and the Court would not interfere in the matter as during such enquiry, all materials would come to light and the law would then take its course. Learned counsel further submitted that despite taking money, when the time came for returning the same, the Company took a decision to close and even the representation on behalf of the Company to return the money to investors, including the complainant, has not been honoured and in fact they are avoiding any correspondence. Learned counsel further submitted that the Chairman of ESBI Industries Limited, has even given a declaration that as and when the monetary condition of the Company improves, the investors shall be given in a proportional basis their dues starting from July, 1989. At this juncture, on a direct query of the Court as to how the petitioners who are not Directors in the ESBI Infrastructure Company Limited can be held responsible, learned counsel submitted that all the companies are connected to each other and



were running from the same premises at Gaya and further the Chairman himself giving a declaration to return money to the persons shows that they are also responsible for such investment. On a further clarification sought by the Court as to how the present five petitioners are even remotely connected to the Company in view of the certificate issued by the Ministry of Corporate Affairs, Government of India, learned counsel was not in a position to counter the same and the only submission was that all these Companies are working in tandem with each other leading to fraud on the general public.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out purely on a legal point. The Court is totally with the learned counsel for the opposite party no. 2 that such trend in the field where common people are taken for a ride and their entire savings are whisked away by unscrupulous persons who show a bright picture of impractical returns, needs to be dealt with an iron fist without showing any compassion or leniency. However, at the same time the Court cannot lose sight of the fact that there being laws operating in the field, whatever steps are taken, have to be in accordance with those laws. In the present case, the entire



allegation is against the ESBI Infrastructure Company Limited and, thus, it has to be looked at from a purely limited scope as to whether the petitioners have any connection with the ESBI Infrastructure Company Limited. For the present case, the Court would not like such enquiry to travel beyond the ESBI Infrastructure Company Limited to include the ESBI Group in general as a whole. The law operating in the fields also require that the persons responsible for running of the Company are liable for its working. In the present case, it is not the allegation against the petitioners that they misrepresented about them being part or officers of the ESBI Infrastructure Company Limited and based on the same the complainant had invested or that it was the petitioners who had also represented that they would return the money at any point of time. Moreover, it was not the petitioners who were said to have run away with the money.

8. Having considered the matter in its entirety, the Court finds that a case for interference has been made out. Accordingly, the order dated 02.05.2016 by which the Judicial Magistrate 1st Class, Gaya has taken cognizance in Complaint Case No. 179 of 2016/ Trial No. 1559 of 2016, as far as it relates to the present five petitioners, stands quashed.



9. The Court would clarify its order that any enquiry which may be pending shall have no effect due to the present order, and if anything on facts comes before the authorities or during the enquiry, connecting the petitioners to the present transaction the law will take its own course, even during trial which would be proceeding against the other co-accused.

10. The application stands allowed.

(Ahsanuddin Amanullah, J)

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