IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6991 of 2018

Arising Out of COMPLAINT CASE-320 Year- 2016 District- PATNA

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Prashant Kumar Jha, Son of Late A. Jha, aged about 44 years, resident of House No.12, Ram Krishna Path, North S.K. Puri, Police Station- S.K. Puri, Town & District- Patna (Bihar).

.... Petitioner

Versus

1. The State of Bihar.
2. K. Y. Daruwala, Son of not known, Managing Director, Sterling & Wilson Powergen Pvt. Ltd. Universal Majestic, 10th Floor, P.L. Lokhande Marg, Chembur (West), Police Station- Tilak Nagar, Mumbai- 400043.
3. Alok Kumar Jha, Son of not known, then posted as General Manager, at present holding the post as Associated Vice President in the Officer of Sterling & Wilson Pvt. Ltd., Sterling, C-56/38, Industrial Area Sector-62, Noida, Police Station- Sector-62, Gautam Buddha Nagar, Noida, Uttarpradesh.
4. Vinod Kumar Singh, Son of not known, General Manager, Power Gen Biz Sterling & Wilson Powergen Pvt. Ltd., 3rd Floor, Benfish IT Tower, Plot G.N. 31, Sector-V, Salt Lake City, P.S.- Electronic Complex, Kolkata- 700091.
5. Avtar K. Saksena, Son of not known, General Manager, (Human Resources), Sterling & Wilson Powergen Pvt. Ltd., 2nd Floor, Benfish IT Tower, Plot G.N. 31, Sector-V, Salt Lake City, P.S.- Electronic Complex, Kolkata- 700091.
6. Rahul Banerjee, Son of not known, H.R. Executive, Manager, Power gen Biz Sterling & Wilson Powergen Pvt. Ltd., 3rd Floor, Benfish IT Tower, Plot G.N. 31, Sector-V, Salt Lake City, P.S.- Electronic Complex, Kolkata- 700091.
7. A.K. Ganguly, Son of not known, Accountant, Power Gen Biz Sterling & Wilson Powergen Pvt. Ltd., 2nd Floor, Benfish IT Tower, Plot G.N. 31, Sector-V, Salt Lake City, P.S.- Electronic Complex, Kolkata- 700091.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Narendra Kumar Sunil, Advocate

For the Opposite Party/s : Mr. Shyam Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-08-2018

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed by the petitioner for quashing the order dated 24.08.2017 passed by the learned Additional District and Sessions Judge-III, Patna in Criminal Revision No.343 of 2017 by which the revision application preferred against the order dated 05.04.2016 passed in Complaint Case No. 320(C) of 2016 by the learned Judicial Magistrate, 1st Class, Patna whereby she had dismissed the complaint in exercise of power conferred under Section 203 of the CrPC, has been rejected and the order passed by the learned Magistrate has been confirmed.

3. The allegation made in the complaint by the petitioner is that while he was working with the company, namely, Jakson Limited at Patna in the month of March, 2012, he was approached by opposite party nos. 3 and 6 over his mobile and mail to join their company called Sterling & Wilson Powergen Pvt. Ltd. Subsequently, the accused nos. 3 to 6, namely, Alok Kumar Jha,

Vinod Kumar Singh, Avtar K. Saksena and Rahul Benerjee discussed with him one by one over mobile and after several rounds of telephonic interview and personal discussion with the opposite parties, it was agreed that he shall be given a package of Rs.11,40,000/- per annum without company car and Rs.10,00,000/-, if car by the company is provided. Further, fuel and other traveling expenses towards consideration of the marketing job were agreed be reimbursed to the petitioner on actual basis besides perks. On such offer made by the opposite parties besides opposite party no.1, he joined the company on 17.07.2012 and after completing the joining formalities, he started imparting his duties as Dy. General Manager Sales, Bihar And Jharkhand. He uplifted the business of the company Sterling & Wilson Powergen Pvt. Ltd. from zero to approximately 16 crores. He was hoping something good from the accused persons but his hopes shattered when he received his termination letter dated 07.07.2015 without prior notice. Then, he requested the accused persons to settle his account. The accused persons never showed any willingness to settle the account. Then, he had to send legal notice to the accused persons dated 29.09.2015 to settle his claim of Rs.14,55,983/-. The opposite party no. 5 responded to the legal notice through his letter dated 03.10.2015 by which offer was made to him to visit Kolkata office for full and final settlement and to return the vehicle provided to him. When he reached Kolkata as against claim of Rs.14,55,983/- the accused persons agreed to pay him Rs.04,56,707/-. Since only a meager amount was offered to him, he felt cheated at the hands of accused persons. He handed over the vehicle and the entire assets to the accused persons whereafter they issued no dues certificate. Despite receiving the entire assets, they did not pay the amount of Rs.4,56,707/- to him or they have paid the statutory provident fund amount when he made request in this regard, they flatly refused to pay a single farthing.

4. On the basis of the aforestated allegations made in the complaint, the petitioner alleged that the accused persons not only cheated him but they also committed breach of trust.

5. The complainant was examined on solemn affirmation and, on his behalf, in course of inquiry conducted under Section 202 of the CrPC, two witnesses were examined. After holding enquiry, the learned Judicial Magistrate vide her order dated 05.04.2016 dismissed the complaint in exercise of powers conferred under Section 203 of the CrPC.

6. The order passed by the learned Judicial Magistrate on 05.04.2016 dismissing the complaint was challenged in revision by the petitioner before the court of sessions vide Criminal Revision

No. 343 of 2017. The revisional court vide impugned order dated 24.08.2017 dismissed the revision application holding therein that there is no illegality in the order passed by the learned Magistrate.

7. Being aggrieved and dissatisfied with the order dated 05.04.2016 passed by the learned Judicial Magistrate, 1st Class, Patna and order dated 24.08. 2017 passed by the learned Additional District & Sessions Judge-III, Patna, the petitioner has preferred the instant application under Section 482 of the Code of Criminal Procedure before this Court.

8. Learned counsel for the petitioner submitted that the court below has erred in law as well as on facts. The learned Additional District & Sessions Judge-III as well as the court of Magistrate failed to appreciate that after joining in the company of the accused persons, the petitioner had started doing his duties from Patna itself and achieved optimum target. He contended that the court below has also failed to appreciate that the petitioner has sustained huge financial loss due to callous attitude of the accused persons. The allegations made in the complaint clearly attracted the ingredients of the offences punishable under Sections 406 and 420 of the IPC. According to him, the dismissal of the complaint in exercise of power conferred under Section 203 of CrPC had caused irreparable loss and injuries to the petitioner.

9. Having carefully perused the complaint and heard the submissions made by the learned counsel for the petitioner, this Court is of the opinion that though the instant application has been filed under Section 482 of the CrPC, the same is in the nature of second revision, which is barred under Section 397(3) of the CrPC.

10. That apart, from a perusal of the complaint and the statement of the complainant made on oath under Section 200 of the CrPC, I find that the complainant had joined the company in question on 17.07.2012 and was terminated vide letter dated 07.07.2015, which means that he served in Sterling & Wilson Powergen Pvt. Ltd. for almost three years and was paid his salary and allowances from time to time. His grievance in the present complaint is in respect of non-payment of the agreed amount of Rs.04,56,707/-.

11. The question would be as to whether such claim would constitute any criminal offence much less the offences punishable under Sections 406 and 420 of the IPC.

12. Section 406 of the IPC prescribes punishment for the offence 'criminal breach of trust'. The offence of 'criminal breach of trust' has been defined under Section 405 of the IPC, which is extracted hereinbelow:-

> "**405. Criminal breach of trust —**
> Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"."

13. From a careful reading of Section 405 of the IPC, it would be evident that 'criminal breach of trust' involves following ingredients :-

(a) a person should have been entrusted with property, or entrusted with dominion over property;
(b) that person dishonestly misappropriated or converted to his own use that property, or dishonestly used or disposed of that property or willfully suffered any other person to do so;
(c) that such misappropriation, conversion, use or disposal was in violation of any direction of law prescribing the mode in which such trust was discharged.

14. In **S.W. Palanitkar & Ors. vs. State Of Bihar & Anr. [2002 (1) SCC 241]**, the Supreme Court while dealing with the ingredients of 'criminal breach of trust' held that as under :-

> "The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged (ii) of any legal contract made touching the discharge of such trust."

15. Keeping in mind the penal provisions provided under Sections 406 and 420 of the IPC and the ratio laid down by the Supreme Court in the aforediscussed cases, when I look to the allegations made in the complaint in hand, I find that there is no allegation that the accused persons were entrusted with any property or entrusted with domain over any property and they dishonestly misappropriated or converted such property to their own use or dishonestly used or disposed of that property. In absence of such necessary ingredients, it cannot be said that the ingredient of 'criminal breach of trust' punishable under Section

406 of the IPC was attracted on the basis of the admitted complaint of the petitioner. The mere allegation that the accused persons did not pay due amount of money to the complainant would not amount to committing an offence of 'criminal breach of trust'.

16. So far as Section 420 of the IPC is concerned, the same prescribes punishment for the offence of 'cheating' and dishonestly inducing delivery of property. The offence of 'cheating' is defined under Section 415 of the IPC, which is extracted hereinbelow :-

> "**415. Cheating —**
> Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

17. The aforesaid Section 415 of the IPC consists of two distinct parts, each part dealing with one way of 'cheating'. It reads as under :-

(a) The first part contemplates where by deception practiced upon a person the accused dishonestly or fraudulently induces that person to deliver property to any person or to consent that any person shall retain any property;

(b) The second part envisages where by deception practiced upon a person the accused intentionally induces that person to do or omit to do, if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

18. The offence punishable under Section 420 of the IPC reads as under :-

> **"420. Cheating and dishonestly inducing delivery of property.-** Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

19. In **Anil Mahajan vs. Bhor Industries Ltd. & Anr. [(2005) 10 SCC 228],** a three-judge Bench of the Supreme Court

considered a case relating to issuance of process for the offence punishable under Sections 415, 418 and 420 of the IPC. In that case, on the basis of allegations made in the complaint, the Magistrate issued the process against the accused. The process was issued by the Magistrate, as complainant had filed documents on record to show that the accused persons had promised to pay the amount, but he did not pay the same with intent to deceive the complainant. Therefore, the Magistrate had held that the complainant had been able to make out a case to issue process against accused under Sections 415, 418 and 420 of the IPC. The said order of the Magistrate was challenged before the court of sessions. The learned Additional Sessions Judge, who heard the matter, set aside the order of the Magistrate issuing process. The order of the learned Additional Sessions Judge was set aside by the High Court. The order of the High Court was challenged by the appellant before the Supreme Court. After analyzing the provision of the IPC under which the complaint was filed and the allegations made in the complaint, the Supreme Court observed that it was a simple case of civil dispute between the parties. It held that requisite averments so as to make out a case of 'cheating' was absolutely absent.

20. In **S.W. Palanitkar & Ors. vs. State of Bihar & Anr.**

(supra), it was held by the Supreme Court as under :-

> "... In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be pre-sumed as an act leading to cheating."

21. In **State of Kerala vs A. Pareed Pillai & Anr. [(1972) 3 SCC 661]**, the Supreme Court held as under :-

> "...To hold a person guilty of the offence of cheating it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise."

22. There is nothing in the complaint to suggest that the intention of the accused persons was to deceive the petitioner at the time of offering him to join the company. Such a dishonest intention could not have been inferred with the mere allegation that the accused persons subsequently failed to fulfil promise. It is not the case of the complainant that after he joined the company, he

was not paid his due wages. The dispute arose after three years of his joining the company Sterling & Wilson Powergen Pvt. Ltd. That would mean that he satisfactorily discharged his duties in the company in question for over two years and was paid due wages. The dispute arose only after he was terminated from service in settlement of his account. Such an act would certainly not constitute an offence of 'cheating'.

23. Apparently, an effort has been made by the petitioner to give a dispute essentially of a civil nature a cloak of criminal offence. It is well-settled position in law that criminal proceedings are not a short-cut of other remedies available in law.

24. The Supreme Court has repeatedly reminded that there is growing tendency to convert purely civil dispute into criminal cases on account of prevalent impression that civil law remedies are time consuming and do not protect the interests of the aggrieved persons. Since the allegation made in the instant complaint are purely in the nature of money claim, the learned Magistrate rightly dismissed criminal complaint in exercise of powers conferred under Section 203 of the CrPC. The revisional court has also committed no error in dismissing the revision application preferred by the petitioner.

25. In view of the discussions made above, I see no merit

in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Kanchan/SkSuman.

AFR/NAFR	NAFR
CAV DATE	NA
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