

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.783 of 2017

Arising Out of PS. Case No.-20 Year-2017 Thana- GAYA MUFFSIL District- Gaya

Vimal Kumar Sharma, Son of Sri G.L. Sharma, Resident of Road No. 1,
Extension, Rajbanshi Nagar, P.S.- Shashtri Nagar, District- Patna
... Petitioner

Versus

1. The State of Bihar, through the Director General of Police, Bihar.
2. The Senior Superintendent of Police, Gaya.
3. The Officer in Charge, Mufasil Police Station, Gaya.
4. Shailendra Reddy, Son of Sri V.S. Reddy, Resident of Srinakagar Colony,
P.S.- Banjara Hills, District- Ranga Feddy
... Respondents

Appearance :

For the Petitioner : M/s Sandeep Kumar & Rohit Raj, Advs.
For the Respondents : Mr. Mrigendra Kumar, AC to GA IV

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

8 07-05-2018 Heard learned counsel for the petitioner and the
learned counsel representing the State.

Despite service of notice, no one has appeared on
behalf of the respondent no. 4.

Earlier the notice was issued to respondent no. 4
through the Officer-in-Charge, Muffasil Police Station, Gaya,
and the Senior Superintendent of Police, Gaya, submitted a
report that the “notice on respondent no. 4 was served through
local authorized officer Mr. V. Krishnam Raju”.

In view of the aforesaid report of the Senior
Superintendent of Police, Gaya, the notice on respondent no. 4
is to be taken as validly served.

Learned counsel for the petitioner has read out the



first information report, as contained in Annexure 1, to the writ application. As per the first information report M/s Rodic Mining Developers Private Limited had entered into an agreement with M/s Ramky Infrastructure Limited whereunder the mining lease area was of the M/s Rodic Mining Developers Private Ltd. and the crusher plant and diesel general set were given to M/s Rodic Mining Developers Private Limited for the purpose of installation on the mining leased area of M/s Rodic Mining Developers Private Limited. Some contract work of M/s Ramky Infrastructure Limited was going on at SH 78 in the State of Bihar and by virtue of the agreement which have been pointed out in the first information report, itself, M/s Rodic Mining Developers Private Limited had to make available the aggregate/concrete for purpose of use in the work.

It is alleged that the M/s Ramky Infrastructure Limited had paid all the bills to M/s Rodic Mining Developers Private Limited, but, when the M/s Rodic Mining Developers Private Limited was called upon to return the crusher plant and generator diesel set, then, it was found that the crusher plant and diesel generator set were missing and those were not available at the site. It is alleged that M/s Rodic Mining Developers Private Limited was unable to give satisfactory reply about the missing



plant and generator set. The informant claimed that if the plant and generator set were stolen, then, the same would be required to be made available by M/s Rodic Mining Developers Private Limited. It is alleged that M/s Rodic Mining Developers Private Limited through the present petitioner has committed theft of the plant and generator set.

Learned counsel for the petitioner submits that from a bare reading of the first information report, it would appear that the agreement in question was executed between M/s Rodic Mining Developers Private Limited and M/s Ramky Infrastructure Limited, even though the petitioner denies execution of such an agreement, taking the allegations as it is, the learned counsel submits that so far as this petitioner is concerned, he cannot be said to have committed theft. According to learned counsel, the dispute, if any, arose between M/s Rodic Mining Developers Private Limited and M/s Ramky Infrastructure Limited who are separate legal entities.

Learned counsel submits that there is no allegation, at all, against this petitioner in the matter of missing of the plant and generator set and in absence of any allegation, at all, against him, he cannot be made an accused in the present case. Learned counsel, further, submits that so far as the present informant is



concerned, he was in no way connected with the affairs of M/s Ramky Infrastructure Limited and in the first information report he has not disclosed as to how he can lodge the first information report in respect of a matter which is governed by the so called agreement of M/s Ramky Infrastructure Limited and M/s Rodic Mining Developers Private Limited. It is further submitted that M/s Rodic Mining Developers Private Limited in which the present petitioner is a Director has spent huge amount in carrying out the works on behalf of M/s Ramky Infrastructure Limited against which huge amount of bills are still pending. He lastly submits that the dispute between M/s Ramky Infrastructure Limited and M/s Rodic Mining Developers Private Limited is a different issue, and in the nature of disputes the allegation of theft, cheating or criminal breach of trust are not made out. Learned counsel submits that a bare reading of first information report, itself, shows that no offence, at all, as alleged is made out against the petitioner in the facts of the present case. The dispute between the two companies are in the nature of civil dispute which has been tried to be given a colour of criminal proceeding.

Learned counsel for the State is present and opposed the application of the petitioner.



Having heard learned counsel for the petitioner and learned counsel representing the State and on going through the contents of the first information report, it appears that according to the first information report there was an agreement between the two companies under which certain contracts works were undertaken on the terms and conditions, contained therein. It is the case of the informant that the crusher plant and diesel generator set were made available to M/s Rodic Mining Developers Private Limited under the said agreement, but, the crusher plant and diesel generator set have gone missing and even if those crusher plant and generator set have been missing, it is the responsibility of M/s Rodic Mining Developers Private Limited to make available the same. So far as the present petitioner is concerned, in the whole first information report I do not find any allegation that this petitioner has indulged in an act of theft, cheating or criminal breach of trust. If the crusher plant and generator set were made available to the company, namely, M/s Rodic Mining Developers Private Limited, in which the petitioner is one of the Directors, handing over the crusher plant and generator set in course of business being an admitted fact the allegation of theft under Sections 379 of the Indian Penal Code cannot be sustained. Section 378 of the Indian Penal Code



defines theft, which reads as under :

“378 : **Theft** – Whoever, intending to take dishonestly any moveable property out of the possession of any person without the person’s consent, moves that property in order to such taking, is said to commit theft.”

In the present case on a bare reading of the first information report, it would appear that there is no allegation that the crusher plant and generator set were taken away by this petitioner from the possession of the informant without his consent, therefore, in the opinion of this Court the ingredients of “theft” as defined under Section 378 of the Indian Penal Code and the offence under Section 379 of the Indian Penal Code are not available. The first information report seems to have been registered also under Sections 420 and 406 of the Indian Penal Code, however, the statements made in the written complaint nowhere discloses ingredients of Section 420 and/or Section 406 of the Indian Penal Code. The fact remains that as per his own statement the crusher plant and diesel generator set were handed over to the company, namely, M/s Rodic Mining Developers Private Limited under an agreement and, therefore, in the matter of handing over the crusher plant and generator set there cannot be a case of cheating or criminal breach of trust. Apparently, a dispute arising out of a commercial deal between two



companies has been given colour of a criminal proceeding without there being any ingredient of the offences alleged.

The first information report, so far it relates to the present petitioner, stands **quashed** and the petition is **allowed**.

(Rajeev Ranjan Prasad, J)

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