IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8117 of 2015

Arising Out of PS. Case No.-218 Year-2014 Thana- KOTWALI District- Patna

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1. Firoz Ahmad son of Hazi Ishtiyaque Ahmad, resident of Indrapuri Colony, Samanpura, P.S. Shashtrinagar, District Patna, Director, M/S Nishant Dwelling Pvt. Ltd. G. 4, Hariniwas Complex, Dak Bunglow Road, Patna
2. Md. Asif Parvez son of Late Md. Quaseemuddin, resident of Quaseem Colony, Dargah Road, Mahendru, P.S. Sultanganj, District- Patna, District- Patna, Director, M/S Nishant Dwelling Pvt. Ltd. G. 4, Hariniwas Complex, Dak Bunglow Road, Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Mahesh Kumar, Son of Sri Rameshwar Sharma, resident of Flat No. 405, Shiv Radhika Complex, Shastri Nagar, PS. Shastri Nagar, District- Patna

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar Mr. Rana Vikram Singh, Mr. Rohit Raj, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 02-05-2019

Heard Mr. Sandeep Kumar, learned counsel along with Mr. Rana Vikram Singh, learned counsel for the petitioners and learned APP for the State.

2. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

> *"That this is an application for quashing the order dated 4.12.14 passed by learned Chief Judicial Magistrate, Patna in Kotwali P.S. case no.*

218/14 (G.R. no. 1957/14) whereby the learned Chief Judicial Magistrate finding Prima facie case has taken cognizance of offences under sections 406, 420/34 of the Indian Penal Code and has proceeded against the petitioners."

3. In the FIR it is stated that the informant along with the petitioners was Director of M/s Nishant Dwelling Pvt. Ltd. (hereinafter referred to as the 'Company') and later on, it is alleged that the informant was fraudulently removed by a resolution of the Board of Directors, which included the petitioners. The police submitted charge sheet only against the petitioners leading to the Court below taking cognizance which is impugned in the present application.

4. Learned counsel for the petitioners submitted that from the plain reading of the FIR itself, it would be obvious that the nature of dispute is purely civil, as it is with regard to certain transactions made on behalf of the Company by the petitioners in the capacity of Directors, though it has been given criminal colour. Learned counsel submitted that for the same grievance, the informant had moved before the Registrar of Companies which has replied to the informant saying that since he had already moved before the police, who was doing investigation, he can move before the Company Law Board (as it then was) or the Court concerned. It was submitted that after the aforesaid

communication by the Registrar of Companies, the informant has also moved the Civil Court in Title Suit for the same cause of action, which is pending. It was submitted that whatever transactions alleged to have been done illegally and even land which has been transferred, is in favour of the Company and not to any individual. It was further submitted that the dispute, if any, with regard to the removal of the informant as a Director is amenable to the provisions under the Companies Act, 2013. Learned counsel submitted that the petitioners have informed the Bank on 12.03.2014 with regard to change of person who would be operating the Bank account on behalf of the Company in terms of the resolution dated 06.03.2014 by which the informant was also removed as a Director and the transactions in question, as indicated in the FIR, are subsequent thereto. It was contended that submitting of the requisite form indicating such removal was required to be done within one month which has been done within the stipulated time and has also been approved by the Competent Authority of the Ministry of Corporate Affairs, Government of India. It was submitted that in such view of the matter, the present criminal proceeding against the petitioners is an abuse of the process of the Court. Learned counsel submitted that in Cr. Misc. No. 47431 of 2014, by order dated 12.12.2014, the Court had noted such submission and accordingly, had granted bail to the petitioners.

5. Learned APP submitted that in view of the Court having considered the matter earlier and what has been submitted today on behalf of the petitioners and the averments made in the present application as well as the materials brought on record, clearly indicates that the matter is purely civil in nature.

6. 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.

7. As has rightly been submitted by learned counsel for the petitioners, the matter is commercial in nature relating to the working of the Company duly incorporated under the relevant statute. The said statute provide for remedy if there is any allegation with regard to any misconduct on the part of any office bearer of the Company, but in any view of the matter, the same cannot be made the subject matter of a criminal proceeding, that too, by an ex- Director who has been removed from his post by the resolution of Board of Directors of the Company, as in the present case.

8. In this connection, the Court would refer to the decision of the Hon'ble Supreme Court in **State of Haryana vs.**

Bhajan Lal reported as **1992 Supp (1) SCC 335**, where at paragraph no. 102 categories have been enumerated where the Court is required to exercise its inherent power under Section 482 of the Code. The same reads as under:

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a serious of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
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> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is*

permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. In the opinion of the Court, the present case is covered under category 7 of the aforesaid decision in **Bhajan Lal** (supra) at paragraph no. 102.

10. Further, the Hon'ble Supreme Court in **Indian Oil Corpn. v. NEPC India Ltd.** reported as **(2006) 6 SCC 736**, at paragraph no. 13, has held as under:

"13. …….. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged......"

11. Similarly, the Hon'ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as **(1977) 2 SCC 699**, at paragraph no. 7, has observed as under:

> *"7. ………In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice......"*

12. In view of the aforesaid, the Court finds that the present criminal prosecution is *mala fide and* meant for the purposes of wreaking vengeance against the petitioners, as a purely civil cause of action has been made a weapon of harassment by instituting of a criminal case. Thus, the Court finds that the same is an abuse of the process of the Court and has been instituted for oblique reasons.

13. Accordingly, the application is allowed. The entire criminal proceeding arising out of Kotwali PS Case No. 218 of 2014 (G R No. 1957 of 2014) pending before the Court below at

Patna, including the order dated 04.12.2014, by which cognizance has been taken stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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