IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4620 of 2015

Arising Out of PS. Case No.-4694 Year-2012 Thana- PURNIA COMPLAINT CASE District-Purnia

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1. Avinash Jain Son of N.C. Jain Resident of A-3/71, Janakpuri, New Delhi-58.
2. Sandeep Awasthi Son of Sri Triloki Nath Awasthi Resident of B 213 Vijaya Apartment, Indira Puram, Ghaziabad, U.P.
3. Arvind Saxena Son of Late Ayodhya Prasad Saxena Resident of H.No-30/2, Dharam colony, Rohtak Road, Nangloi, New Delhi-41. All of Arise India Ltd., B-38, Jain Chaok, Palam, Mangla Puri, New Delhi-45.

... ... Petitioner/s

Versus

1. State Of Bihar
2. Uday Shankar Arya (Partner of M/s Shubham Enterprises), Son of Late S.N. Arya Resident of Gulab Bagh, P.S - Sadar, District - Purnia.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Iqbal Asif Niazi, Adv
For the Opposite Party/s	:	Mr. Radha Mohan Singh, Adv
For the State	:	Mr.Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 16-07-2019

Heard learned counsel for the parties.

2. This application under Section 482 Cr.P.C. is for quashment of order dated 20.01.2014 passed in Complaint Case No. 4694 of 2012 whereby the learned Judicial Magistrate-1st Class, Purnea has taken cognizance against the petitioners for offences under Sections 420,406,120-B I.P.C. on the complaint of opposite party No.2-Uday Shankar Arya.

3. According to the complaint petition, the complainant is one of the partners of M/s Shubham Enterprises, Purnea. The

complainant entered into a business agreement with the Company of the petitioners known as Arise India Ltd. A copy of the agreement paper dated 11.07.2011 is at Annexure-2.

4. It is worth to notice that Arise India Ltd. is not accused in this case and the law is well settled that criminal prosecution cannot be launched against the office-bearers of the Company unless the Company is an accused in the case. Reference may be made to the case of **S.K. Alagh Vs. State of Uttar Pradesh & Ors**, reported in **(2008)5 SCC 662**.

5. Allegation is that under the said agreement, the complainant was appointed as Super Distributor of the Company of petitioners for the area mentioned in the complaint petition. In pursuance of agreement, the complainant paid Rs. Eleven Lacs through cheque to the Company of the petitioners and the petitioners were to pay interest @ 12% per annum on that amount. During business transaction between the parties, the complainant supplied materials to different person as per direction of the Company of the petitioners, however, no payment was received by the complainant for goods supplied on the direction of the Company of the petitioners. The complainant has two grievances; first is non-payment of the cost of goods supplied and second is

non-payment of the interest on the security amount as well as non-refund of the security amount.

6. Learned counsel for the petitioners submits that a bare perusal of the complaint petition would make it clear that the matter is of a pure civil dispute arising out of a contract between the parties and for that civil remedy is there. The conduct of the petitioners in non-procuration of the cost of goods supplied to different customers does not constitute dishonest and fraudulent intention of the petitioners to deceive the complainant to deliver any property. It is not the allegation that the Company of the petitioners received the cost of the goods supplied to different customers. If those customers have not paid the cost of the goods, the same may be for different reason including some malicious intention on the part of those consumers and for that the petitioners or their Company cannot be blamed. Moreover, the issue of accounting is still pending and after clearance of the same, the Company of the petitioners would refund the security money and shall pay interest thereon if still found payable at the time of accounting. His next contention is that the criminal law does not envisage vicarious liability which is a liability in the arena of torts. Therefore, in absence of the Company, the petitioners cannot be held liable.

7. Learned counsel for the complainant-opposite party No.2 submits that since the Magistrate has applied its judicial mind on the basis of material available on the record, this Court should not interfere in such matter in a casual manner.

8. In **Indian Oil Corporation Vs. N.E.P.C. India Ltd**, reported in **(2006) 6 SCC 736,** the Hon'ble Supreme Court held that any efforts to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

9. In the circumstance, the allegation disclosed in the complaint petition does not show that at any point of time, the petitioners or the Company of the petitioners acted with dishonest and fraudulent intention much less at the time of initial agreement. Moreover, the matter is of accounting as to how much goods were supplied to each of the consumers and how much amount is due. In paragraph-5 of the complaint petition, the complainant is specific that it is responsibility of the complainant to collect the cost of the goods supplied and the Company of the petitioners was to help in realization of the dues amount. Therefore, the parties were conscious about the effect of the dealing with different consumers in business life. Hence, in my view, ingredients of offences are not attracted in the present facts and circumstances

nor the petitioners can be prosecuted in absence of the Company of the petitioners.

10. In the circumstance, the criminal prosecution of the petitioners would amount to abuse of the process of the court. Accordingly, the same is hereby quashed and this application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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