

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22446 of 2014

Arising Out of PS. Case No.-100 Year-2008 Thana- PATNA COMPLAINT CASE District-
Patna

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Ramanjee Jha Son of Maharudra Jha R/o Village-Nandan Tower, Flat No.-C-801, P.s.-Kankarbagh, District-Patna.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Nirpendra Kumar Son of Sri Achuta Nand Sinha R/o Mohalla Road No.-1/D, Rajendra Nagar, P.S.-Kadamkuan, District-Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Naresh Dikshit

For the Opposite Party/s : Mr.Kanhaiya Kishoreapp

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 21-02-2019

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

2. Despite service of notice on opposite party no. 2,
nobody appeared on his behalf when the matter was taken up and
heard.

3. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:

*“That the instant application is being filed
for setting aside the order dated 20/11/2008 passed
in Complaint Case no. 100(C)/2008 by Sri Ramayan
Ram, learned Judicial Magistrate 1st Class, Patna
whereby and whereunder the learned Magistrate has
taken cognizance for an offence under Section*



120B/420 and 138 N.I. Act and has issued summon against the petitioner.”

4. The opposite party no. 2 had filed complaint against the petitioner and five others in which the allegation was that the other co-accused has induced him to invest Rs. 28 lakhs in M/s IDO Construction & Industries (I) Ltd. (hereinafter referred to as the ‘Company’).

5. Learned counsel for the petitioner submitted that though he is a Director in the said firm, but no role has been assigned to him in inducement of the opposite party no. 2 for making such huge investment in the Company. Learned counsel submitted that there was no material brought on record or even indicated in the complaint with regard to the petitioner so as to make him an accused. Learned counsel submitted that only because he is a Director in the Company, making him an accused in such a case is an abuse of the process of the Court. Learned counsel submitted that against the petitioner, there is not even a whisper with regard to misappropriation or embezzlement and further, as per the Companies Act, if there is any mismanagement of funds or in running of the Company, complaint has to be filed first before the Registrar of Companies and, thus, in such view of the matter also, the present complaint is not sustainable in the eyes of law. Learned counsel submitted that even with regard to the



allegation of cheque being issued and not honoured, the same is against other co-accused and not against the petitioner.

6. Learned A.P.P. submitted that the petitioner is also a Director of the Company and, thus, cannot claim to be innocent. However, on a direct query of the Court as to whether there was any specific or direct allegation or even a reference with regard to the petitioner in the entire complaint case or any role assigned to him, learned A.P.P. could not show to the Court any such material.

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. There being absolutely no allegation against the petitioner in the entire complaint with regard to either inducement or entrustment of money or even issuance of cheque, just because he may be a Director in the Company, would not make the petitioner liable for any of the allegations which have been levelled against the other co-accused, even if, for the sake of argument, the same are accepted to be true. The petitioner, in the capacity of a Director, cannot be made to suffer the rigors of a trial just because of such holding of post in the Company when the allegation against the other co-accused is direct. Moreover, as per the allegations also, there was inducement to invest a huge amount in which no role is



assigned to the petitioner. Similarly, even with regard to the cheque which was not honoured, the same was not alleged to have been issued by the petitioner. Thus, in no way, the prosecution, as far as the petitioner is concerned, can be sustained.

8. For reasons aforesaid, the Court finds that the present prosecution against the petitioner is with *mala fide* intention and only to harass him.

9. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 100(C) of 2008, including the order dated 20.11.2008 by which cognizance has been taken, as far as it relates to the petitioner, stand quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

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