

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 49108 of 2014

Arising Out of Complaint Case No.-1561 Year-2013 Thana- BHAGALPUR COMPLAINT
CASE District- Bhagalpur

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1. Nikhil Malhotra, Son of Dharm Pal Malhotra, Director M/s S.D. Agro Chemical Limited C-201, Vivek Vihar, Delhi-110095.
 2. Mani Bhushan Pandey, Son of Late Hari Pandey, Senior Marketing Manager (Bihar), M/s S. D. Agro Chemical Ltd. C-201, Vivek Vihar, Delhi-110095.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Shiv Kumar Singh, S/O Late Adhik Lal Singh, Proprietor of M/s Shivam Seeds Resident of Mohalla Girdhari Sah Hat, Sabji Mandi, P.S. - Kotwali District Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Sinha and Mr. Nilesh Kumar Nirala, Advocates
For the Opposite Party/s	:	Mr. Navjot Yesu, Advocate, Mr. Aditya Abhishek and
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 11-03-2019

Heard learned counsel for the petitioners; learned A.P.P.
for the State and learned counsel for the opposite party no. 2.

2. The Court finds that the present application is not maintainable as the complainant has not been made a party.

3. Learned counsel for the petitioners submitted that he has made the Company, of which the complainant was the owner, a party. The Court finds such stand to be thoroughly misconceived. It is an absurd preposition that a party will choose whom to make



party, especially in a case which has been filed being aggrieved by a complaint case filed by any other party. It is not the discretion of the person who assails such filing of the complaint case as to whom he will make a party, for the law requires that the person who has filed the complaint, to which there is challenge, has to be mandatorily made a party.

4. Faced with the situation, learned counsel for the petitioners sought permission to make necessary correction in the description of the opposite party no. 2. Let the same be done during the course of the day.

5. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief.

“That this is an application on behalf of the petitioner under section 482 of the Code of Criminal Procedure, 1973 for quashing of the order of cognizance dated 02.07.2014 by which cognizance has been taken u/s 420, 406/34 of the Indian Penal Code against the petitioner and one M.B. Pandey, Senior Marketing Manager by Sri Shashi Bhushan Kumar, Judicial Magistrate, 1st Class, Bhagalpur in complaint case no. 1561 of 2013.”

6. The opposite party no. 2, has filed complaint case against the petitioners alleging that fraudulently the cheque given by him to them had been presented in the Bank. It was further alleged that one of the cheques which was presented was with



dishonest intention and further the petitioners sending legal notice with regard to non payment of the cheque amount, the same was also with dishonest intention as the opposite party no. 2 claimed not issuing any cheque.

7. Learned counsel for the petitioners submitted that the *mala fide* intention of the opposite party no. 2 would be clear from the fact that purely civil business dispute has been given criminal colour only for the purposes of taking undue advantage and, thus, clearly it is an abuse of the process of the Court. It was submitted that the opposite party no. 2 does not dispute that at the time of getting into an agreement with the petitioners, he had given two cheques, which were to be used, if required. It was submitted that as per the account maintained by the petitioners, when the amount exceed Rs. 1,00,000/- one of the cheques was utilized to recover the amount and, thus, if the opposite party no. 2 has any dispute with regard to whether the amount was due to him, it is a matter of accounting after verifying from the records and cannot be made the subject matter of a criminal proceeding. Learned counsel submitted that the said cheque for Rs. 1,05,020/- was in fact not encashed and, thus, the petitioners had sent legal notice through learned counsel to the opposite party no.2 and this had prompted him to file the present case. Learned counsel submitted that the



irony is that the opposite party no. 2 never disputed that the said cheque was given to the petitioners by way of security. It was submitted that once this fact is not disputed, the obvious intention on part of both the parties was that, if the need arises, the said cheques would be encashed. Thus, learned counsel contended that the opposite party no. 2 could not have expected or cannot take the stand in law that though he had given cheques to the petitioners for use if required, but the same should not be utilized. It was submitted that if such contention is accepted, it would clearly prove that in fact, the intention to commit cheating and fraud was on the part of the opposite party no. 2, when he gives the cheques voluntarily to the petitioners but with the intention that they should not use it.

8. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the Court below has found material and taken cognizance.

9. Learned counsel for the opposite party no. 2 further submitted that the petitioners had raised demand which was not tenable and, thus, they could not have utilized the cheque for recovery of such amount. It was further submitted that the business between the parties was going on smoothly and whatever amount the opposite party no. 2 owed to the petitioners was being



regularly paid. However, on a query of the Court as to with what intention had he given the cheque to the petitioners, if they were not to be utilized, learned counsel could not give any answer. Further, on a query of the Court as to why the matter was not taken before a Civil Court as it was a pure question of settlement of accounts under a business deal and agreement between the parties, once again, learned counsel did not have any answer.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the opinion of the Court, a case for interference has been made out.

11. As has rightly been submitted by learned counsel for the petitioners, there cannot be any grievance, much less any criminal motive attributable to the petitioners for having used the cheque which is not claimed to have been forcibly taken or stolen from the opposite party no. 2. Thus, once the cheques have admittedly been given to the petitioners, by the opposite party no. 2 himself, without any coercion or duress, the obvious implication in law is that the person who receives the cheque, would be entitled to its encashment. Thus, if the petitioners had got the cheque and sent the cheque for encashment, no wrong can be attributed to them. If the petitioners did not want the cheques given to him to be presented to the Bank by the petitioners, he



should not have given the cheque in the first place, but once he had given the cheques, he cannot take a plea that wrongly it has been sent for encashment. Moreover, when clearly the stand of the opposite party no. 2 is that he did not owe any money to the petitioners, but still the cheques had been given to the petitioners, it is proved that the dispute/issue is purely civil relating to money. Thus, for the same, criminal proceeding is clearly not maintainable and an abuse of the process of the Court.

12. In this connection, it would be relevant to refer the judgment of the Hon'ble Supreme Court in the case of **Indian Oil Corpn. v. NEPC India Ltd.** reported as **(2006) 6 SCC 736**, where at paragraph no. 13 it has been observed 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.....”

13. Moreover, the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, at paragraph no. 102 has laid down various categories under which the Court ought 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 series 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.

(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.”

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

15. Similarly, in the case of **State of Karnataka v. L. Muniswamy reported as (1977) 2 SCC 699**, at paragraph no. 7, the Hon’ble Supreme Court 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.....”



16. In the aforesaid background, the Court finds that the complaint case has been filed with *mala fide* intention, for wreaking vengeance against the petitioners and to harass them.

17. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case no. 1561 of 2013, including the order taking cognizance dated 02.07.2014 passed by the Judicial Magistrate 1st Class, Bhagalpur, stand quashed.

(Ahsanuddin Amanullah, J.)

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