

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44602 of 2014

Arising Out of Case No.-231 Year-2014 Thana- GOPALGANJ COMPLAINT CASE District-
Gopalganj

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1. Rakesh Kumar Son of Late Mahangu Singh Flat No. C/304, Everest Co-operative Housing Society Ltd., Near Amba Mata Mandir, P.S. G.I.D.C., District - Valsad Gujrat, Proprietor-IGE Medical Systems, Office-703, Jagat Trade Centre, Frazer Road, Patna, P.S. - Kotwali, District - Patna.
 2. Saroj Kumar Mishra Son of Late Ramdeo Mishra, Regional Business Manager (R.B.M.), I.G.E., 703, Jagat Trade Centre, Frazer Road, Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ajay Kumar Ojha Son of Sita Saran Ojha Resident of Banjari, P.S. and District - Gopalganj.
3. Bhupendra Nath Tiwari Son of Late Kailash Nath Tiwari Resident of Barkagaon, P.S. - Mirganj, District - Gopalganj, at present Resident of Arrar Mode, North of Mahindra Tractor Agency, P.S. and District - Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Raghwendra Sharan Pandey with Mr. Sandeep Kumar Singh, Advocates
For the State	:	Mr. Ram Bachan Singh, APP
For the O. P. Nos. 2 and 3	:	Mr. Shailendra Kumar Singh with Mr. Kumar Kaushalendra, Advocates

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 15-03-2019

Heard learned counsel for the petitioners; learned A.P.P.
for the State and learned counsel for the opposite parties no. 2 and
3.

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 of the order taking cognizance dated 25.08.2014 passed in Complaint case No. 231/2014/T.R. No. 4102/2014 by Sri R. K. Dwivedi the Learned Judicial Magistrate 1st Class Gopalganj where by and where under cognizance of the offence under sections 403 and 417 of the Indian Penal Code has been taken against the petitioners and summons have been issued to them in this connection. The petitioners further prays for quashing of the entire criminal proceeding in this connection.”

3. The allegation in the complaint filed by the opposite parties no. 2 and 3 is that they had got into a sub-contract with the Company of the petitioners and as per its terms, the complainants had to run the ultrasound/radiation services at Sadar Hospital, Gopalganj for which, as per the original contract between the Company of the petitioners and the State Health Society, payment was to be made to the Company of the petitioners and the profit was to be shared in the ratio of 56:44 between the parties. The further stipulation was that the sub-contract, which was initially for one year, was subject to renewal upon satisfying the conditions. The allegation was that the due payments of the complainants was not being made by the Company of the petitioners inspite of cheque of Rs. 4,64,000/- having been received by them. The objection raised in the complaint was also



that suppressing the fact that the sub-contract had to be approved by the State Health Society, the Company of the petitioners had got into the sub-contract with the complainants and finally, when the complainants had come to Patna for payment of their dues, they were locked up and beaten and also abused and threatened that they would be killed if they persisted in demanding money.

4. Learned counsel for the petitioners submitted that the complaint case is not maintainable, both in law as well as on facts. On the point of jurisdiction/maintainability of the complaint case at Gopalganj, it was submitted that no criminal offence has been alleged at Gopalganj and the complaint relating to assault and abuse is only at Patna. It was submitted that, at best, at Gopalganj, the allegation is with regard to dispute of sharing of money, which is a purely civil dispute. Learned counsel submitted that on facts also, the allegations are totally false and frivolous. It was submitted that there was no suppression on the part of the Company of the petitioners with regard to the requirement of approval of the State Health Society, inasmuch as, in the agreement between the parties, it was clearly mentioned at Clause 38 that the terms of the State Health Society which binds the Company of the petitioners shall necessarily bind the complainants. Thus, it was submitted that the same being



incorporated in the terms of the agreement between the parties, there could not have been any suppression by the Company from the petitioners. Learned counsel submitted that with regard to the dispute of payment, besides the same being purely of a civil nature, the complainants by keeping the centre closed, were liable to pay the fine which was imposed by the authorities @ Rs. 2,000/- per day. It was further submitted that besides keeping the premises under lock during the pendency of the agreement, the same was not opened even beyond the period of such agreement and, thus, in the absence thereof, the entire period, till the premises was not vacated by the complainants, they were liable to pay. Learned counsel submitted that the agreement itself provided that for extending the period, the complainants had to apply for renewal one month prior to the date of expiry of the term, and when the same was not done, on 02.09.2011, the Company of the petitioners wrote to the complainants to come for renewal. It was submitted that in response thereto, one of the complainants, i.e., the opposite party no. 3, had given a letter to the Company of the petitioners in which it was stated that it was the other partner, i.e., opposite party no. 2, who had locked the premises. Thus, it was submitted that it was the fault on the part of the complainants for the centre not functional, leading to imposition of fine/penalty.



Learned counsel submitted that even after reminders, when the premises was not vacated, request was made to the authorities to get the same vacated and only upon intervention by the authorities, the premises was vacated on 04.01.2012. It was submitted that the original PNDT registration certificate issued by the Civil Surgeon, Gopalganj to the Company of the petitioners, was in the possession of the complainants, which would be clear from the letter written by the Company, both to the complainants, as well as to the Civil Surgeon, Gopalganj. It was submitted that till date, the said original certificate has not been returned to the Company of the petitioners for its renewal. It was submitted that the Civil Surgeon of the district was delegated the power with regard to approval of sub-contract and in the present case various communications from the Civil Surgeon, Gopalganj show that the centre was being operated through the sub-contractor, i.e., the complainants.

5. Learned counsel, in support of his contentions, relied upon the decision of the Hon'ble Supreme Court in **Inder Mohan Goswami v. State of Uttaranchal** reported as **2008 (1) PLJR (SC) 82**, the relevant being at paragraphs no. 23, 24, 32 and 41, for the proposition that no cheating is made out against the petitioners as there was no inducement, since admittedly it was the



complainants who had come forward and had made an offer to the Company of the petitioners to run the medical facilities for providing Ultrasound and X-ray facilities at the centre. In this context, he drew the attention of the Court to the communication dated 08.09.2010 by the complainants to the Company of the petitioners.

6. Learned counsel further relied upon the decision of the co-ordinate Bench of this Court in **Rana Sengupta v. State of Bihar** reported as **2008 (3) PLJR 602**, the relevant being at paragraphs no. 5 to 8, for the proposition that when there was no inducement to the complainants to enter into the transaction, the offence of cheating cannot be made out.

7. Learned A.P.P. submitted that the Court below having found material has rightly passed the order which does not need any interference at this stage.

8. Learned counsel for the opposite parties no. 2 and 3 submitted that there is no infirmity in the order impugned. On the point of jurisdiction, he submitted that when there is both civil and criminal nature in any given facts of a case, both proceedings are maintainable. In the present case, it was submitted that there is allegation of cheating with regard to not paying the amount due to the complainants which happened at Gopalganj and, thus, the other



allegation of there being assault and abuse and threatening at Patna, it was the discretion of the complainants where to file case and him having chosen Gopalganj is perfectly within the four corners of law. For such proposition, learned counsel relied upon the decisions of this Court in **Sukhdeo Bhagat vs. State of Bihar** reported as **2019 (1) PLJR 701**, the relevant being at paragraphs no. 6 and 9 and **Binod Kumar vs. State of Bihar** reported as **2019 (1) PLJR 853**, the relevant being at paragraphs no. 8 to 11. Learned counsel submitted that the ingredients of Section 403 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') are made out with regard to dishonest misappropriation of property, drawing the attention of the Court to the definition in Section 24 of the I.P.C. which defines “dishonestly”. It was submitted that the said definition would indicate that the petitioners, with intention of causing wrongful gain to themselves and wrongful loss to the complainants, having kept with them the money which rightfully belonged to the complainants, clearly are guilty of the offence. He further referred to the definition of “wrongful gain” and “wrongful loss” in Section 23 of the I.P.C. With regard to Section 417 of the I.P.C., learned counsel submitted that the punishment contemplated was for cheating which has been defined in Section 415 of the I.P.C. Learned counsel submitted that the complainants



were fraudulently and dishonestly induced to get into the agreement on the promise that the profit would be shared, but despite the petitioners having got money from the authority, by not giving the share of the complainants, are guilty of cheating.

9. 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.

10. First and foremost, the complaint is clearly in two parts. The first relates to a dispute as to what amount the Company of the petitioners owed to the complainants. This has been clearly spelt out in the complaint itself where it is admitted that out of the money received by the authorities, the share of the complainants was not given to them, and it has also been explained that on a wrong premise that the penalty of Rs. 2,46,000/- was recoverable from the complainants, the payment was not being made, when the complainants could have been penalized only for five days in terms of the agreement which comes to Rs. 10,000/-. Thus, it is clear that such allegation is of a purely civil nature for which the only course available to the complainants was by moving before the Civil Court of competent jurisdiction. Here comes the issue of jurisdiction. Admittedly, the dispute with regard to money is entirely at Gopalganj and, thus, proceedings with regard to the said



grievance can be initiated only at Gopalganj, but only on the civil side.

11. Now comes the main issue as far as the criminal case is concerned. From the complaint, in the opinion of the Court, the only allegation which can be made out and said to have a criminal colour is the allegation of assault and abuse and threatening which, as per the complaint itself, happened entirely at Patna and, that too, where the complainants are said to have come, on their own, in the office of the Company of the petitioners. Thus, if at all, any complaint or criminal proceeding could be instituted, it would be within the jurisdiction of the local Court at Patna. This is the mandate of Section 177 of the Code which prescribes that every offence ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. The Court would not conclude the issue only on the basis of objection with regard to maintainability. In the present case, the Court deems it appropriate to refer to the allegations also.

12. As has been observed earlier, the genesis of the whole issue is the dispute with regard to payment of the share which the complainants claim from the Company of the petitioners. Thus, it is absolutely clear that the said issue being purely civil, no criminal proceeding should be allowed to continue.



As far as the allegation with regard to assault and abuse and threatening, in the background of the position of the parties and the fact that some money was claimed and which has also been explained in the complaint itself indicating dispute as to who would be responsible for non-functioning of the Health Centre, the allegation of having locked up the complainants in the room of the office and then of thrashing them and threatening them appears to be far-fetched and quite unbelievable. At this juncture, it would be relevant to indicate that neither is there any allegation in the complaint that for such assault the complainants needed medical attention nor any medical report has been brought on record, either before the Court below or even before this Court. As far as the contention of learned counsel for the complainants is concerned, the decisions relied upon by him in **Sukhdeo Bhagat** (supra) and **Binod Kumar** (supra), there cannot be any dispute with the proposition of law that when a particular fact discloses both criminal and civil offence, just because there is a civil angle to the dispute, would not preclude the party from instituting a criminal proceeding also, which would be maintainable. The moot question in the present case is whether there is only a civil angle and no criminal angle. At the cost of repetition, the Court having found that the issue basically is a civil dispute with regard to money,



coupled with the fact that the said dispute is completely restricted to the jurisdiction of the Court at Gopalganj, even on the ground of territorial jurisdiction, proceedings at Gopalganj would be maintainable with regard to a civil suit. However, if, for the sake of argument, it is taken that there is also a criminal element which justifies criminal proceedings, the entire criminal aspect/allegation being restricted to Patna, clearly in terms of Section 177 of the Code, the Court at Patna having jurisdiction is the only Court before which such complaint would be maintainable and not at Gopalganj. However, the Court, for the foregoing reasons, finds that the allegations which indicate some criminal offence, in the overall view of the matter, do not appear to be probable or believable. Thus, allowing a criminal proceeding on the basis of such cosmetic and clearly unreliable allegation, in the opinion of the Court, is not justified in the facts and circumstance of the present case.

13. With regard to the allegation of there being dishonest intention, suffice to say that it was the complainants themselves who had moved before the Company of the petitioners for the sub-contract and, thus, rightly the Hon'ble Supreme Court in **Inder Mohan Goswami** (supra) and a Bench of this Court in **Rana Sengupta** (supra) have held that based on such fact, there



cannot be any allegation of there being fraudulent or dishonest inducement to deliver property.

14. Further, with regard to the allegation of dishonest misappropriation, when the opposite party no. 3 himself has written to the Company of the petitioners making allegation against his partner, i.e., the opposite party no. 2, that he had put the lock and the lock having been opened at the intervention of the local authorities, definitely the apportionment of the penalty would have to be worked out, which is absolutely a money claim and, thus, civil in nature.

15. The Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335**, at paragraph no. 102, has enumerated categories where 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 omission 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.”

16. The present case, in the opinion of the Court, falls under category 7 of the aforesaid judgment in the case of **Bhajan Lal** (supra) at paragraph no. 102.

17. Similarly, the Hon’ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 Supreme Court Cases 699 at paragraph no. 7 has observed thus:

“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.
.....”

18. In the aforesaid background, the Court finds that the prosecution is *mala fide*, untenable and solely intended to harass the petitioners.

19. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 231 of 2014 (T.R. No. 4102 of 2014), including the order dated 25.08.2014, by which cognizance has been taken, as far as it relates to the petitioners, stand quashed.

(Ahsanuddin Amanullah, J)

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