IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5736 of 2012

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Pottanani Joseph Mathew, Managing Director, Inter Connected Stock Exchange of India Ltd., International Infotech Park, Tower no. 7, 5th Floor, Sector 30- Vashi, Navi Mumbai-4000703

... ... Petitioner/s

Versus

1. The State of Bihar
2. Mr. Ram Subhag Singh S/o Shri Padam Deo Singh, Resident of House no. 21, Kasturba path, North S.K. Puri P.S. S.K. Puri District Patna 800001

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Advocate
		Mr. Atul Kumar, Advocate
For the Opposite Party/s	:	Mr. Manoj Kumar, Advocate.
For the State	:	Mr. Md. Arif, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 14-02-2019

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

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

> *"That this is an application for quashing the order dated 03.07.2009 passed in complaint case no. 114 (c) of 2009 by Sri Dasarath Mishra, Learned Judicial Magistrate, Ist Class, Patna whereby and where under the learned Magistrate has taken cognizance of offences under Section 406, 420 and 120B of the*

Indian Penal Code and issued summons against the petitioner and other accused persons."

3. The petitioner along with four others have been made accused by the opposite party no. 2 in a complaint case alleging that the Company of whose Managing Director the petitioner was at the relevant time had duped him. The allegation is that the other co-accused, who were officers of a broker Company, had lured him to invest in the shares of Bombay Dyeing through the Stock Exchange Company of the petitioner. It is further alleged that for an amount of Rs. 3,66,856/- out of Rs. 5,32,679.09/-, the complainant was neither allotted the shares nor the money returned.

4. Learned counsel for the petitioner took the Court through the entire complaint case and submitted that nowhere there is a whisper with regard to any contact of the complainant with the petitioner. It was submitted that there is an averment that the other co-accused, who were not connected with the Company of the petitioner, had asked him to invest in shares through the Stock Excharge Company of the petitioner, but there is nothing to show and it has not even been indicated anywhere with regard to the petitioner having ever interacted with the complainant, much less, having given him any assurance in the matter. It was further submitted that in any view of the matter, the grievance of the

opposite party no. 2 is the non return of his money as no shares of Bombay Dyeing Company was allotted to him, which is a purely civil dispute and clearly the present criminal proceeding against him is an abuse of the process of the Court.

5. Learned A.P.P. submitted that though the Court has taken cognizance, but from the facts and circumstances of the case and the records, it does not appear that against the petitioner at least, there is any criminal complicity.

6. Learned counsel for the opposite party no. 2 submitted that it was the petitioner's Company through which the other accused had assured the opposite party no. 2 of allotment of shares of Bombay Dyeing Company and, thus, he is also responsible. On a direct query of the Court to learned counsel as to how, on the representation of a third party, the petitioner would become liable, when even the complainant had never stated with regard to there being any direct interaction with the petitioner and also there being no allegation that at any point of time the co-accused had also represented that the petitioner had asked them to get the opposite party no. 2 to buy the shares through his Stock Exchange Company, learned counsel for the opposite party no. 2 to could not show any connection.

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. The contention of learned counsel for the petitioner is correct that from the entire pleadings in the complaint case as well as the statement of the witnesses as well as the complainant during inquiry, before the Court, there is not even a remote connection shown with the petitioner and the complainant either with regard to the allegation of any amount paid by him or non return/non allotment of shares in his favour. In fact, the Court is surprised as to how, in such background, the Court below has taken cognizance against the petitioner, when he cannot even remotely be connected or said to be involved, even if the allegations are accepted at their face value. This Court would have taken the matter seriously for such casual approach by the Court below in such matters when a citizen is unnecessarily harassed for no fault on his part just because of negligence on the part of the Court which is expected to act as the protector of innocent persons and also as an institution which delivers justice and also ensures that injustice is not caused to any person. However, the Court by way of indulgence is not passing any order against the Court below.

8. Coming to the merits of the matter, the Court finds that there is hardly any requirement or a detailed discussion on merits as, at the cost of repetition, no allegation has either been levelled or any criminal complicity made out against the petitioner in the present case. Thus, the Court finds that the present case is squarely covered under categories 5 and 7 of 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 of the judgment, various situations have been enumerated where the Court should 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.*
>
> *(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. For reasons aforesaid, the Court finds that the present prosecution against the petitioner is *mala fide*, untenable and solely with the intention to harass the petitioner.

10. Accordingly, the application stands allowed. The entire criminal proceeding arising out of Complaint Case No. 114 (C) of 2009, including the order dated 03.07.2009 by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

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