

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3744 of 2015

Arising Out of Case No.-1563(C) Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

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Abhay Kumar @ Abhay Patel S/O Late Raghu Nandan Singh Proprietor of
M/s Sri Balaji Plastic, Resident of Adarsh Colony, Machharhatta Gali, P.S-
Khajekalan, Distt-Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. M/S Sri Om Sales Proprietor, through Ram Ekwel Sah S/O Late Mahendra
Sah Resident of Vill-Bihari sao Lane, Opposite Kamdhenu Hotel, P.S-
Pirbahore, Distt.-Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Singh with
Mr. Shivendra Kumar Sinha, Advocates

For the State : Mr. Jharkhandi Upadhyay, APP

For the O. P. No. 2 : Mr. Uma Shankar Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 20-06-2019

Heard learned counsel for the petitioner; learned APP 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 (hereinafter referred to as
the ‘Code’) for the following relief:

*“That this is an application for quashing the order
dated 27.9.13 passed by the learned Judicial Magistrate
1st Class, Patna by which learned Magistrate took the
cognizance for offences alleged under sections 138 of
N.I. Act and 406 of the Indian Penal Code in Complaint
case No. 1563 (C) of 2013.”*



3. The allegation against the petitioner in the Complaint Case No. 1563 (C) of 2013 filed by the opposite party no. 2 is that a cheque of Rs. 20,00,000/- issued by the petitioner in favour of the opposite party no. 2 was not honoured.

4. Learned counsel for the petitioner submitted that the parties were in business transaction for a long time but from the year 2012, the petitioner started his own factory with regard to the raw material made by the opposite party no. 2 and, thus, there was no business transaction between them since then. It was submitted that in the year 2010 itself, the said cheque of Rs. 20,00,000/- was issued by the petitioner in favour of the opposite party no. 2 but the same was only by way of security deposit and with *mala fide* intention, the opposite party no. 2 presented the cheque before the Bank showing the date of issue of the cheque as 04.03.2013. Learned counsel submitted that even after the so called cheque being dishonoured on 11.03.2013 and thereafter on re-representation on 18.03.2013, notice is said to have been sent on 02.04.2013 to which the petitioner replied on 08.04.2013 and the complaint case was filed on 07.05.2013. Learned counsel submitted that from the cheques issued by the petitioner, it would be clear that the serial number of the cheque in question indicates that it was issued between 14.06.2010 to 29.06.2010 as the cheque



bearing No. 547934 was issued by the petitioner to the opposite party no. 2 on 14.06.2010 for an amount of Rs. 1,50,000/- whereas the next cheque bearing No. 574948 was for an amount of Rs. 1,00,000/- and was dated 29.06.2010. Subsequently also, till 08.02.2011, the petitioner had issued cheques in favour of the opposite party no. 2. It was submitted that the next cheque after 29.06.2010 was in the same serial i.e., bearing No. 547949 and was dated 12.07.2010 for Rs. 2,00,000/-. Learned counsel submitted that, thus, the cheque in question bearing No. 547936 was clearly given to the opposite party no. 2 by the petitioner somewhere between 14.06.2010 and 29.06.2010 and not on 04.03.2013, which is the date put by the opposite party no. 2, while presenting the cheque to the Bank for encashment. Learned counsel submitted that the said act is clearly fraudulent and dishonest. Learned counsel further submitted that the entire claim of the petitioner stands falsified in view of the statutory return filed by him before the authority relating to Value Added Tax (VAT), as was in force then, in which for the period he allegedly supplied raw materials, such is not reflected from his return. It was submitted that later on a revised return was filed for the period 01.07.2012 to 30.09.2012 and subsequently from 01.10.2012 to 31.12.2012 in which only for the period 01.07.2012 to 30.09.2012



goods worth Rs. 20,33,580/- is shown to have been sold to the Company of the petitioner. Learned counsel submitted that such sale claim by the opposite party no. 2 to the Company of the petitioner is not borne by any contemporaneous official records or returns which are required to be filed before various statutory authorities under different laws. It was submitted that the petitioner filed an application before the Sales Tax authorities of the State with regard to verification from the original cashmemo relating to such sale which the opposite party no. 2 claims to have made to the petitioner during the period in question, in which, despite notice being issued to the opposite party no. 2 and opportunity given on more than one occasion, nothing was produced and, thus, the authorities have given a categorical finding that such transaction does not appear to be genuine.

5. Learned APP fairly submitted that in view of materials brought on record, the allegation does not appear to be true and the prosecution cannot be sustained in law.

6. Learned counsel for the opposite party no. 2 submitted that the present transaction was of the year 2012 and all materials/documents which the petitioner relies upon pertain to the period 2010, and thus, of no relevance, as the issue has to be



judged on the basis of the allegation of cheques having been issued in the year 2012.

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.

8. The fact that the cheque in question is numbered 547936 and the cheques issued by the petitioner to the opposite party no. 2 bearing No. 5467934 is dated 14.06.2010 and cheque bearing No. 547948 is dated 29.06.2010, clearly indicates that the cheque in question was issued in between the aforesaid two cheques. Thus, the contention of the petitioner that it was issued between 14.06.2010 to 29.06.2010 is believable and fit to be relied upon. Further, when from the official records of the Competent Authority, it is established that in the initial return filed for the period when the opposite party no. 2 claims to have supplied raw material to the petitioner worth Rs. 20,00,000/-, the opposite party no. 2 has filed revised return only on 16.07.2013 and, in that too, only for the period 01.07.2012 to 30.09.2012, the goods sold to the petitioner's Company is shown to be worth Rs. 20,33,580/-. The Court would pause here. If the transaction was over by 30.09.2012, there is no explanation as to why cheque was issued/presented on 04.03.2013, i.e., almost six months after the so called supply of



raw material by the opposite party no. 2 to the petitioner and, more importantly, after two months of filing of the complaint petition the revised return was filed. The other equally glaring aspect which raises *bona fide* and genuine doubt with regard to reliability of the allegation of the opposite party no. 2 of having supplied the material, is that the revised return shows Rs. 20,33,580/- and, thus, in such background, there is no explanation as to why only cheque of Rs. 20,00,000/- was given. If in the revised return, a higher amount is shown and the difference is of Rs. 33,580/-, there cannot be any explanation or reason why the opposite party no. 2 would take an amount of Rs. 33,580/- less from the petitioner than the amount for which he has supplied goods and for which he has also filed return, i.e., has paid tax on the said amount.

9. In the counter affidavit filed on behalf of the opposite party no. 2, the following statement have been made at paragraph no. 3.

“3. That the opposite party also filed Income Tax Return for that period about the above same amount.

A true copy of the Income Tax Return Chart is annexed herewith and marked as Annexure-B to this counter affidavit forming part hereof.”

10. Perusal of the counter affidavit and the so called Annexure- B reveals that it does not pertain to Income Tax,



muchless return of Income Tax. The same are documents relating to the Commercial Taxes Department of the State Government. It is, thus, obvious that the opposite party no. 2 has not only tried to mislead the Court but has made patently false statement on oath in the present proceeding.

11. Coming to the merits, there is no substance in the counter affidavit as nothing on merits has been countered except for the statement of having filed Income Tax return with the averment that the copy of the same is also on record, which is incorrect.

12. From the submissions made at the Bar and materials on record, the Court is convinced that the so called cheque which has been presented by the opposite party no. 2 and which is said to have been returned without being honoured is neither in the normal course of business nor for a genuine due which the petitioner might have owed to the opposite party no. 2. Further, as per the claim of the opposite party no. 2 himself, the cheque in question of Rs. 20,00,000/- was paid for the materials supplied by the opposite party no. 2 to the petitioner. The fact that the number of the cheque in question is between two cheques issued to the opposite party no. 2 by the petitioner between 14.06.2010 and 29.06.2010, more or less establishes the fact that the said cheque



was issued between the said period. The same also not having been presented for encashment for almost two years and nine months cannot be taken as a genuine issuance of cheque in lieu of specified goods received by the petitioner from the opposite party no. 2. From the facts, what comes out lends credence to the contention of learned counsel for the petitioner that the said cheque was issued only by way of a security for the business transaction so that the person supplying any goods, i.e., the opposite party no. 2 in the present case, is kept covered for any loss he may suffer in the event the purchaser i.e., the petitioner, did not pay the amount. If such fact is accepted, everything falls into place and the number of the cheque and its issuance between 14.06.2010 and 29.06.2010 also stands explained. In the counter affidavit, it has not been denied that since 2010, there is no business dealing between the petitioner and the opposite party no. 2. Thus, both the two facts if reconciled lead to the obvious conclusion that first of all the cheque was not meant to be encashed, muchless on 04.03.2013, and secondly that in the absence of any indication from any contemporaneous records with regard to the alleged supply of goods by the opposite party no. 2 to the petitioner during the period in question, the entire allegation made in the complaint case appears to be false. This fact is further



corroborated by the return filed before the Commercial Taxes Authority by the opposite party no. 2 for the period in question which does not disclose any such sale by the opposite party no. 2 to the petitioner and only after two months of filing of the present complaint case, a revised return having been filed and which too, does not appear to have been by way of final return, as no such final return has been brought on record by the opposite party no. 2, coupled with the fact that on a request made by the petitioner seeking verification of such sale from the original vouchers/cashmemos maintained by the opposite party no. 2 and the authorities finding that such transaction shown is not reliable, the view of the Court with regard to the complaint lacking *bona fide* gets reinforced. The Court, at this juncture, would further observe that the opposite party no. 2 cannot claim innocence for not filing the return as it is statutory and also there is time limit for filing the same and moreover, filing a revised return, that too, after two months of filing of the complaint case, when quarterly return for the period 01.07.2012 to 30.09.2012 had to be filed before the authority latest within one month, i.e., 31st October, 2012, but the revised return being filed only on 16.07.2013 and, that too, without final return being filed by the opposite party no. 2, as neither such averment is made in the counter affidavit nor any document in



support thereof brought on record, clearly such conduct is only to create some sort of evidence to buttress the allegations, which otherwise would have stood exposed and falsified.

13. In the present matter, though strictly speaking and technically, the issue relates to dishonour of a cheque for which cause of action a proceeding does lie under the Negotiable Instruments Act, 1881, but in the particular facts and circumstances of the present case, the Court would not confine it to the parameters of whether an instrument has been honoured or not but would go into the larger aspect as to whether and under what circumstances such instrument was issued and whether the complainant, i.e., the opposite party no. 2 was legally entitled to receive the payment in terms of the cheque he claims to have presented and not honoured.

14. The inherent power of the Court under Section 482 of the Code is specially meant for such situations where orders can be passed, both for preventing the abuse of the process of the Court and for securing the ends of justice.

15. The law further requires that though there may be presumption in favour of the holder of a cheque with regard to discharge of any debt or other liability but the same is a rebuttable presumption and the party charged with such non-payment has the



right to prove the contrary. In the present case, the Court has looked at the issue from various angles and has come to the conclusion that the complaint case is false and frivolous, not on the basis of mere submissions or stand taken on behalf of the petitioner, but also on the basis of contemporary official documents which law recognizes and which are admissible in evidence and which in the present case have neither been controverted nor denied. Thus, taking an overall view, in the considered opinion of the Court, allowing such criminal prosecution to continue would clearly be an abuse of the process of the Court as the conduct of the opposite party no. 2 lacks *bona fide* which is borne out from the records and circumstances, which speak out against the authenticity of the complaint.

16. In this connection, the Court would refer to the decision of the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal**, reported as **1992 Suppl. (1) SCC 335**, where at paragraph no. 102, categories have been enumerated 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.”

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

18. Further, the Hon’ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SCC 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.....”

19. In the aforesaid background, the Court finds that the present complaint case is *mala fide* and meant to harass the petitioner.

20. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 1563 (C) of 2013, pending before the Court below at Patna, including the order dated 27.09.2013 by which cognizance has been taken, stands quashed.

(Ahsanuddin Amanullah, J)

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