

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33184 of 2016

Arising Out of Case No.-2676 (C) Year-2015 Thana- PATNA COMPLAINT CASE District- Patna

1. Praveen Sah, Son of Late Har Narayan Sah

2. Ashish Singh, Son of Late Vijendra Singh

Both Directors of DNA Infrastructure Private Limited, Resident of Vivekanand Marg, Opposite A.N. College, Boring Road, P.S- Sri Krishnapuri, Patna, Presently having office at Sector-G/11, Noida, P.S.- Gautam Budha Nagar, Dist. Noida in the State of Uttar Pradesh

... .. Petitioner/s

Versus

1. The State Of Bihar.

2. Prabhakar Kuar, Son of J.P. Kuar, Resident of 205, Sangeeta Palace, Shiv Puri, P.S.- Shastri Nagar, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate

Mr. Rajesh Kumar, Advocate

For the State : Mr. Arun Kumar Pandey, A.P.P.

For the Opposite Party : Mr. Gautam Kumar Kejriwal, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 30-01-2019

Heard learned counsel for the petitioners; learned A.P.P.

for the State and learned counsel for the Opposite Party No. 2.

2. The 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 order dated 09.09.2015 passed by Smt. Shefali Narayan, Learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 2676 (C) of 2015 whereby and whereunder cognizance for offences under 417 and 418 has been taken against the petitioners.”



3. As per the complaint filed by the Opposite Party No. 2, the petitioners were arrayed as accused no. 2 and 3 and Avinash Kumar was made accused no. 1, with whom the Opposite Party No. 2 had got into an agreement for execution of some work. It is alleged that the other co-accused had got an agreement for completion of the work with DNA Infrastructure Private Limited, of which the petitioners are Directors, which was later on passed on to the Opposite Party No. 2 by the other co-accused. It is alleged that despite the Opposite Party No. 2 completing the work as was required by him under agreement with the other co-accused, he has not been paid due to non-payment of the amount by the petitioners to the other co-accused.

4. Learned counsel for the petitioners submitted that this is a classic case of abuse of the process of the court by which persons totally unconnected and not privy to any deal between two parties who may have entered into an agreement among themselves are made accused and harassed by filing of a criminal complaint case against them. It was submitted that it is admitted in the complaint itself that the Opposite Party No. 2 had entered into an agreement only with the other co-accused. It was further submitted that in the complaint it is also admitted that the other co-accused had an agreement with the petitioners' Company for



execution of some work but nowhere in the complaint it is stated that the petitioners or their Company were party to the agreement between the Opposite Party No. 2 or the other co-accused also. Learned counsel drew the attention of the Court to the agreement between the Opposite Party No. 2 and the other co-accused which clearly discloses that there was absolutely no connection of the petitioners or their Company with the Opposite Party No. 2 and though the work which was subcontracted to the Opposite Party No. 2, was totally by and at the level of the other co-accused without the petitioners or their Company having any role in it. Learned counsel submitted that at best, the other co-accused could have had a case against the petitioners and their Company for payment, but the Opposite Party No. 2 cannot have a claim against the petitioners or their Company for any payment. Learned counsel submitted that the other co-accused has never made any complaint before any forum or authority with regard to any dues he may have against the petitioners and their Company, being the only competent person to raise such a demand. In this connection, learned counsel referred to the decision of the Hon'ble Supreme Court in **Murari Lal Gupta v. Gopi Singh** reported as **(2005) 13 Supreme Court Cases 699**, the relevant being at paragraph no. 6, where the Court had quashed the complaint case.



5. Learned A.P.P. submitted that from perusal of the complaint and the materials on record, it is apparent that the case stands covered by the aforesaid decision of the Hon'ble Supreme Court in the case of **Murari Lal Gupta** (supra).

6. Learned counsel for the Opposite Party No. 2, at the outset, submitted that if the matter is referred to arbitration, the issue can be resolved. When asked to address on merits, learned counsel submitted that the petitioners being the main contractors and the Opposite Party No. 2 entering into an agreement with the contractor of the petitioners, i.e., the other co-accused, the ultimate liability for payment would rest on the petitioners and their Company and due to non-payment by them to the other co-accused, the Opposite Party No. 2 is not getting his due money. It was submitted that the petitioners all along accepted the work which was done by the Opposite Party No. 2 and, thus, it was their duty to make payment. Learned counsel referred to the decision of the Hon'ble Supreme Court in **Arun Bhandari v. State of U.P.** reported as **(2013) 2 Supreme Court Cases 801**, the relevant being at paragraphs number 28, 31 and 34, for the proposition that the complaint petition may reveal commercial transaction or money transaction but that would not be a ground to hold that there was no criminal element involved. However, on a direct



query of the Court with regard to the decision relied upon by learned counsel for the petitioners in the case of **Murari Lal Gupta** (supra), in the facts and circumstances of the present case, learned counsel for the Opposite Party No. 2 was not able to make any distinction.

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 petitioners at no point of time were ever under any legal obligation whatsoever towards Opposite Party No. 2. From the reading of the complaint as well as the agreement between the Opposite Party No. 2 and the other co-accused, it is apparent that the dealing/agreement was only limited to the Opposite Party No. 2 and the other co-accused without any involvement of the petitioners or their Company. The agreement itself discloses that neither there is even a reference that such agreement was pursuant to any approval or concurrence of the petitioners or their Company nor they were signatory to such agreement. It may be at the discretion of the other co-accused, who was in agreement with the petitioners and their Company for execution of some work, but him subcontracting with any person with whom he makes an agreement is totally within the discretion of the other co-accused



and not the petitioners. Thus, clearly the liability, at best, would rest only on the other co-accused who admittedly was the person who had subcontracted with the Opposite Party No. 2 for performing whatever part of the job he was required to do as per the agreement. This, in no way shall create any liability, much less any criminal liability, on the petitioners for whatever payment the Opposite Party No. 2 may claim, which can be only and only against the other co-accused with whom the Opposite Party No. 2 had got into an agreement. The Court finds that the decision of the Hon'ble Supreme Court in the case of **Murari Lal Gupta** (supra) which has been referred to and relied upon by learned counsel for the petitioners covers this case.

8. Further, 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 laid down 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 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.”*

9. The present case, in the opinion of the Court, is covered under categories 1 and 7 of the aforesaid judgment in the case of **Bhajan Lal** (supra) at paragraph no. 102.

10. Coming to the decision relied upon by learned counsel for the Opposite Party No. 2 in the case of **Arun Bhandari** (supra), the Court would only observe that it was in the background of completely different set of facts. In one instance, the Hon'ble Supreme Court's decision, at paragraph no. 28, was in the background that the accused had received goods and did not pay the money. In the present case, there is no such direct connection between the petitioners and the Opposite Party No. 2. Further, at paragraph no. 34 also, the Hon'ble Supreme Court has held that the accused, who was the wife, may not directly have privity of contract but was the holder of Power of Attorney and was present at the time when payments were made and was aware of the execution of the Will and accepted the money along with her husband. In the present case, there is no such similarity.

11. In the instant case, the Court finds that the prosecution is *mala fide*, untenable and solely intended to harass the petitioners. The stand taken by learned counsel for the Opposite Party No. 2 that the matter be referred to arbitration is a



pointer that the entire complaint case, as far as the petitioners are concerned, is only with the purpose of exerting undue pressure for them to get into some agreement. Thus, it is with the sole intention to harass the petitioners. Even the nature of the complaint, which can be said to be solely against the other co-accused, is clearly civil in nature. The Hon'ble Supreme Court has also held with regard to such instances, but as the Court is not concerned with the other co-accused, it is not going into such aspect of the matter in this case.

12. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 2676 (C) of 2015 along with the order dated 09.09.2015 by which cognizance has been taken, as far as it relates to the petitioners, stands quashed.

(Ahsanuddin Amanullah, J)

Anjani/-

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