

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24610 of 2011

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1. Md. Israil S/O Late Bengali Miya, Managing Director Of Hotel Koshi Niwas Pvt.Ltd. Bangali Bazar, Saharsa, P.S. And Distt. -saharsa.
 2. Md.Salahuddin S/O Md. Israil, Director Of Hotel Koshi Niwas Pvt.Ltd. At Present Residing At Ganjala Mohalla, Saharsa, P.O., P.S. And Distt. - Saharsa.
 3. Bijendra Kumar Jha S/O Sri Nageshwar Jha R/O Ganjala Chowk, P.S. And Distt. -saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Bibi Jubeda Khatoon (since dead)
Md. Saukat Ali, son of late Md. Hashim R/O Islamia Chowk, Ganjala Mohalla, P.O., P.S. & Distt. -Saharsa.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Umesh Pd. Singh, Sr. Advocate Mr. Ram Akwal Singh, Advocate Mr. Prakash Kumar Jha, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Opposite Party/s	:	Mr. Md. Anjum Akhtar, Advocate Mr. Md. Helal Akhtar, Advocate Mr. Md. Nausad Akhtar, Advocate Mr. Vikash Kumar Shukla, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 04-01-2019

Heard Mr. Umesh Prasad Singh, learned senior counsel along with Mr. Ram Akwal Singh and Mr. Prakash Kumar Jha, learned counsel for the petitioners; learned A.P.P. for the State and learned counsel for the opposite party no. 2.

2. The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:



“That the petitioners are filing this application to quash the order dated 4.4.2011 passed by Smt. Jyoti Kumari, Judicial Magistrate, Ist Class, Patna by which she took cognizance against the petitioners u/s 468,471/34 IPC in Comp. Case No. 19(C) of 2011 and also to quash the criminal proceeding initiated on the basis of petition of complaint filed by the complainant opposite party no. 2.”

3. The allegation against the petitioners is that they got the petitioner no. 2 inducted as a Director of the Company Hotel Koshi Niwas Private Limited on the basis of forged and fabricated signature of the husband of the complainant and also of getting shares of Bibi Husnara and Md. Hadis transferred fraudulently in favour of the petitioner no. 2.

4. Learned counsel for the petitioners submitted that the petitioners have been falsely implicated on frivolous charges which are totally unconnected with the real facts. It was submitted that basically it is a family dispute as the husband of the complainant is the full brother of petitioner no. 1 and petitioner no. 2 is the son of petitioner no. 1. It was submitted that initially the Company had two Directors i.e., the petitioner no. 1 and the husband of the complainant but when he became seriously ill, the petitioner no. 2 was inducted as a Director on 31.10.2005. Learned counsel submitted that thereafter the Company was run peacefully and unfortunately the husband of the complainant died on



18.11.2005. It was submitted that for almost six years the complainant did not raise any objection before any authority and only in the year 2011 she filed the present complaint and also moved before the Registrar of Companies, Patna as also the District Magistrate, Saharsa which shows the *mala fide* intention. Learned counsel submitted that all the allegations relate to non-compliance of various provisions under the Companies Act for which the only forum is before the Registrar of Companies or the National Company Law Tribunal. Learned counsel submitted that for these issues, the opposite party no. 2 filing the complaint and that too after such a long gap, requires interference by the Court. Learned counsel submitted that earlier the Court had referred the matter to the Mediation Cell of the Patna High Court but the complainant did not co-operate.

5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the court below, after enquiry and recording evidence of witnesses, has taken cognizance, which is correct in law. It was submitted that from the plain reading of the complaint itself as well as what has come during deposition, it is clear that the allegations are specific with regard to forgery and fabrication of documents relating to signature of the late husband of the original complainant and further with regard to fraudulent



transfer of shares in favour of petitioner no. 2. It was further submitted that the complainant, being an old lady, was not fully aware of the legal procedures and was under impression that everything was okay till the time she got information from the office of the Registrar of Companies, Patna with regard to the documents relating to the annual return and balance-sheet of the Company which reveals such forgery by the petitioners. Learned counsel submitted that the petitioner no. 3 is also party to the illegal acts of the petitioners no. 1 and 2 as he is the Managing Director/Caretaker of the Hotel being run by the Company and in the forgery of documents and also not maintaining proper accounts or showing correct earnings of the Company/Hotel, his role is also vital.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find that there is any error in the order taking cognizance by the court below warranting interference by this Court under its inherent powers. From the complaint and the evidence of the enquiry witnesses, it cannot be said that no criminal offence is made out. The law is settled on the principle that there may be instances where for the same offence there may be various penal consequences under various laws and in such case, proceedings,



both on the civil as well as the criminal side are maintainable. In the present case, the Court finds that this is one such case where for the criminal offence, it cannot be held that the complaint is totally frivolous requiring to be interfered with.

7. For the reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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