

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 16207 of 2014**

Arising Out of Protest-cum-Complaint Case No.-506 (C) Year-2012 Thana- JEHANABAD
COMPLAINT CASE District- Jehanabad

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1. Rajesh Mishra, Son of Ramesh Chandra Mishra, Resident of 306, Purnima Apartment, P.S. Kankarbag, Patna, District Patna.
 2. Mittan Paul, Son of M.C. Paul, Resident of House No. 171, Zone No. 1A, Birsa Nagar, Jamshedpur, P.S. Birsa Nagar, District East Singhbhum.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ranjeet Kumar, Son of Late Nawal Kishore Mishra, Resident of Mohalla Raza Bazar, P.S. Jehanabad, District- Jehanabad.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : None

For the State : Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 02-05-2019

Nobody appears on behalf of the petitioners. Learned APP for the State has been heard.

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

“That, this application is being filed on behalf of the petitioners above named for quashing the order dated 01.06.2013 passed by Mrs. Rachna Raj, the learned Judicial Magistrate, 1st Class, Jehanabad in Trial No. 3185 of 2013 arising out of Protest-cum-Complaint Case No. 506 (C) of 2012, whereby and where under the learned Magistrate has been pleased to take cognizance against the petitioners under Sections 384 of the Indian Penal Code.”



3. The allegation against the petitioners is of committing fraud with regard to the loan papers of opposite party no. 2-complainant and also of threatening to destroy and kill the family. Further, the allegation is also with regard to demand of Rs. 10-15 lakhs by way of extortion.

4. The opposite party no. 2 had initially filed Makhdumpur PS Case No. 332 of 2011 on 25.09.2011, in which the police after investigation submitted Final Report on 10.02.2012, stating that the case was of civil nature. In the meantime, the opposite party no. 2 had filed Protest-cum-Complaint Case in Makhdumpur PS Case No. 332 of 2011 on 01.12.2011. After accepting the final report submitted by the Superintendent of Police in Makhdumpur PS Case No. 332 of 2011, the Court proceeded on the Protest-cum-Complaint which was numbered as Complaint Case No. 506 of 2012. After recording the deposition of witnesses, the Court below, by order dated 01.06.2013, took cognizance against the petitioners under Section 384 of the Indian Penal Code.

5. The allegation made by the opposite party no. 2 in the Protest-cum-Complaint Petition is that he had taken loan of Rs. 8,50,000/- (Rupees eight lakhs and fifty thousand) for purchasing a Truck bearing Reg. No. BR-25A-0289 from Sri Ram Transport



Finance Company Ltd. (hereinafter referred to as the 'Company') in the year 2008 and for that signature of the complainant on many plain papers had been taken fraudulently as the signature was obtained on plain paper as well as one cheque by petitioner no. 1 who assured that as soon as he would pay some money, all the papers and cheque would be returned to him.

6. It was further stated that the complainant had given rupees seven lakhs on different occasions to the petitioner no. 2 and both the petitioners had been threatening the complainant that one more agreement of the same Truck had been done of Rs.9,00,000/- (Rupees nine lakhs) and if he (complainant) will not give Rs. 15,00,000/- (Rupees fifteen lakhs), then, by showing an agreement of Rs. 21,00,000/- (Rupees twenty one lakhs), he would be destroyed and he, his family and driver would be killed.

7. It is further stated that when the said Truck was returning from Jehanabad after unloading, then altogether 8-10 persons, including the petitioner no. 1, had stopped the said Truck along with driver and *khalasi* and they had been traceless and the *khalasi* of the Truck informed the complainant after 8-10 days about the occurrence. It was stated that the driver of the said Truck was under treatment in Pradeep Memorial, Ashok Nagar, Kankarbag and the Truck was found beside the road in Fatuha.



8. It is also stated that the case was not lodged by the complainant and driver due to fear, but again on 11.12.2010, petitioner no. 1, along with two unknown persons, at Tehata Bypass Road, made a demand of approximately Rs. 10-15 lakhs and stated that he should see the condition of the driver and the same treatment would be meted to him.

9. Earlier, notice was issued to the opposite party no. 2 on a number of occasions and finally paper publication was also made, but he has chosen not to appear in the present case. In view of such position, the Court had directed the Superintendent of Police, Jehanabad to submit a report as to whether the opposite party no. 2 was residing at the address disclosed by him in the complaint. Pursuant thereto, the Superintendent of Police, Jehanabad has filed affidavit enclosing a report submitted to him by the Sub Divisional Police Officer, Jehanabad as contained in Memo No. 2102 dated 10.04.2019. Perusal of the same reveals that the opposite party no. 2 is no more living at the address he has disclosed in the complaint as he has moved from that place without giving any forward address. Most importantly, it has been stated that it had come to light that the opposite party no. 2 had taken loan from many persons who were repeatedly visiting his



residence demanding return of money due to which there was regular tiffs and controversies.

10. Learned APP submitted that after witnesses were examined, the Court having taken cognizance, cannot be said to be bad in law.

11. The Court having given its anxious consideration, in the facts and circumstances of the case, is of the considered opinion that a case for interference has been made out.

12. As the dispute basically relates to a loan agreement between the parties, any allegation with regard to the terms between the parties, its variation by any of the parties or otherwise, obviously comes under the domain of a civil dispute, for which the forum is the Civil Court of competent jurisdiction. Moreover, the proceeding seems to be a counter blast for action taken by the Company, of which the petitioners were employees, as the opposite party no. 2 had defaulted in making repayment on the scheduled dates due to which the Company had resumed possession of his truck which was taken on loan. Moreover, the opposite party no. 2 being a businessman cannot plead fraud and allege that his signatures on blank papers as well as cheques were taken fraudulently. If what has been alleged is true i.e., the truck in question was stolen and the driver and *khalasi* of the truck were



missing for ten days from 23.09.2010 and there being no steps taken by the opposite party no. 2, with regard to locating the truck and men in question, clearly indicates that the complaint case was filed as a well thought of strategy to exert undue pressure on the Company in the matter of repayment of loan taken by the opposite party no. 2 for purchase of the truck. Initially, FIR was also lodged on 25.09.2011, i.e., after more than one year of the alleged occurrence in which the police had submitted Final Report holding it to be a civil dispute. If it has to be believed that the petitioner no. 1 had demanded Rs. 10-15 lakhs as extortion on 11.12.2010, there is absolutely no explanation as to why the opposite party no. 2 did not inform any authority for more than nine months, which clearly indicates the falsity of such charge. The conduct of the opposite party no. 2 does not appear to be fair as the Company has not been made an accused, for it was the Company from whom the opposite party no. 2 had taken loan and it not being made a party in the case, such complaint has been held by the Courts to be not maintainable.

13. The Hon'ble Supreme Court in **Sharad Kumar Sanghi v. Sangita Rane** reported as **(2015) 12 SCC 781**, at paragraphs no. 9 to 13 has held as under:

“9. The allegations which find place against the Managing Director in his personal capacity seem to be



absolutely vague. When a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability. In Maksud Saiyed v. State of Gujarat, it has been held, thus: (SCC p. 674, para 13)

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”

10. In this regard, reference to a three-Judge Bench decision in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla would be apposite. While dealing with an offence under Section 138 of the Negotiable Instruments Act, 1881, the Court explaining the duty of a Magistrate while issuing process and his power to dismiss a complaint under Section 203 without even issuing process observed thus: (SCC p. 96, para 5)

“5. ... a complaint must contain material to enable the Magistrate to make up his mind for issuing



process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words 'if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding'. The words 'sufficient ground for proceeding' again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed."

After so stating, the Court analysed Section 141 of the Act and after referring to certain other authorities answered a referent and relevant part of the answer reads as follows: (S.M.S. Pharmaceuticals Ltd. case, SCC p. 103, para 19)

"19. ... (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied."

The same principle has been reiterated in S.K. Alagh v. State of U.P., Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd. and GHCL Employees Stock Option Trust v. India Infoline Ltd.



11. *In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in Aneeta Hada v. Godfather Travels and Tours (P) Ltd. in the context of the Negotiable Instruments Act, 1881.*

12. *At this juncture, it is interesting to note, as we have stated earlier, that the learned Magistrate while passing the order dated 22-10-2001, had opined, thus:*

“It appears prima facie from the complaint filed by the complainant, documents, evidence and arguments that the accused company has committed cheating with the complaint by delivering old and accidented vehicle to her at the cost of a new truck. Accordingly, prima facie sufficient grounds exist for registration of a complaint against the accused under Section 420 IPC and is accordingly registered.”

13. *When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant.”*

14. The Hon'ble Supreme Court in **Aneeta Hada v. Godfather Travels & Tours (P) Ltd.** reported as **(2012) 5 SCC**



661, at paragraphs 25 to 32, 43, 49, 51, 52, 62, 63 and 64 has held as under:

“25. In Halsbury’s Laws of England, Volume 11(1), in paragraph 35, it has been laid down that in general, a corporation is in the same position in relation to criminal liability as a natural person and may be convicted of common law and statutory offences including those requiring mens rea.

26. In 19 Corpus Juris Secundum, in paragraph 1358, while dealing with liability in respect of criminal prosecution, it has been stated that a corporation shall be liable for criminal prosecution for crimes punishable with fine; in certain jurisdictions, a corporation cannot be convicted except as specifically provided by statute.

27. In H.L. Bolton (Engineering) Co. Ltd. vs. T.J. Graham & Sons Ltd. Lord Denning, while dealing with the liability of a company, in his inimitable style, has expressed that a company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such. In certain cases, where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. The learned Law Lord referred to Lord Haldane’s speech in Lennard’s Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. Elaborating further, he has observed that in criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will render the company itself guilty.

28. It may be appropriate at this stage to notice the observations made by MacNaghten, J. in



Director of Public Prosecutions v. Kent and Sussex Contractors Ltd.

“.....A body corporate is a “person” to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention – indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstance may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate.

29. In this regard, it is profitable to refer to the decision in *Iridium India Telecom Ltd. v. Motorola Inc and Ors.* wherein it has been held that in all jurisdictions across the world governed by the rule of law, companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they are not capable of possessing the necessary mens rea for commission of criminal offences. It has been observed that the legal position in England and United States has now been crystallized to leave no manner of doubt that the corporation would be liable for crimes of intent.

30. In the said decision, the two-Judge Bench has observed thus:-

“The courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. In other words, the criminal intent of the “alter ego” of the company/body corporate i.e. the person or group of



persons that guide the business of the company, would be imputed to the corporation.”

31. In Standard Chartered Bank (supra), the majority has laid down the view that:

“ 6. There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the fact that the corporation cannot commit a crime, the generally accepted modern rule is that..... a corporation may be subject to indictment and other criminal process, although the criminal act may be committed through its agent.

It has also been observed that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment is mandatory imprisonment and fine.

32. We have referred to the aforesaid authorities to highlight that the company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. In this backdrop, Section 141 of the Act has to be understood. The said provision clearly stipulates that when a person which is a company commits an offence, then certain categories of persons in charge as well as the company would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain. As is perceptible, the provision makes the functionaries and the companies to be liable and that is by deeming fiction. A deeming fiction has its own signification.

43. A contention was raised before this Court on behalf of the State of Madras that the conviction could be made on the basis of Section 10 of the 1955 Act. The three-Judge Bench repelled the contention by stating thus: -

“3. The learned counsel for the appellant, however, sought conviction of the two respondents on the basis of Section 10 of the Essential Commodities Act under which, if the person contravening an order made under Section 3 (which covers an order under the Iron



and Steel Control Order, 1956), is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. It was urged that the two respondents were in charge of, and were responsible to, the Company for the conduct of the business of the Company and, consequently, they must be held responsible for the sale and for thus contravening the provisions of clause (5) of the Iron and Steel Control Order. This argument cannot be accepted, because it ignores the first condition for the applicability of Section 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate or by the High Court that the sale in contravention of clause (5) of the Iron and Steel Control Order was made by the Company. In fact, the Company was not charged with the offence at all. The liability of the persons in charge of the Company only arises when the contravention is by the Company itself. Since, in this case, there is no evidence and no finding that the Company contravened clause (5) of the Iron and Steel Control Order, the two respondents could not be held responsible. The actual contravention was by Kamdar and Vallabhadas Thacker and any contravention by them would not fasten responsibility on the respondents.” (emphasis supplied)

The aforesaid paragraph clearly lays down that the first condition is that the company should be held to be liable; a charge has to be framed; a finding has to be recorded, and the liability of the persons in charge of the company only arises when the contravention is by the company itself.

49. On a reading of both the paragraphs from Anil Hada case, it is evincible that the two- Judge Bench expressed the view that the actual offence should have been committed by the company and then alone the other two categories of persons can also become liable for the offence and, thereafter, proceeded to state that if the company is not prosecuted due to legal snag or otherwise, the prosecuted person cannot, on that score alone, escape from the penal liability created through



the legal fiction and this is envisaged in Section 141 of the Act. If both the paragraphs are appreciated in a studied manner, it can safely be stated that the conclusions have been arrived at regard being had to the obtaining factual matrix therein.

*51. We have already opined that the decision in Sheoratan Agarwal runs counter to the ratio laid down in C.V. Parekh which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in Anil Hada has to be treated as not laying down the correct law as far as it states that the director or any other officer can be prosecuted without impleadment of the company. Needless to emphasize, the matter would stand on a different footing where there is some legal impediment and the doctrine of *lex non cogit ad impossibilia* gets attracted.*

52. At this juncture, we may usefully refer to the decision in U. P. Pollution Control Board v. M/s. Modi Distillery. In the said case, the company was not arraigned as an accused and, on that score, the High Court quashed the proceeding against the others. A two-Judge Bench of this Court observed as follows: -

“6. Although as a pure proposition of law in the abstract the learned single Judge’s view that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors under sub-s.(1) or (2) of S.47 of the Act unless there was a prosecution against Modi Industries Limited, the Company owning the industrial unit, can be termed as correct, the objection raised by the petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum. We have already pointed out that the technical flaw in the complaint is attributable to the failure of the industrial unit to furnish the requisite information called for by the Board. Furthermore, the legal infirmity is of such a nature which could be easily cured. Another circumstance which brings out the narrow perspective of the learned single Judge is his failure to appreciate the fact that the averment in paragraph 2 has to be construed in the light of the averments contained in paragraphs 17, 18 and 19 which



are to the effect that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors were also liable for the alleged offence committed by the Company.”

Be it noted, the two-Judge Bench has correctly stated that there can be no vicarious liability unless there is a prosecution against the company owning the industrial unit but, regard being had to the factual matrix, namely, the technical fault on the part of the company to furnish the requisite information called for by the Board, directed for making a formal amendment by the applicant and substitute the name of the owning industrial unit. It is worth noting that in the said case, M/s. Modi distilleries was arrayed as a party instead of M/s Modi Industries Limited. Thus, it was a defective complaint which was curable but, a pregnant one, the law laid down as regards the primary liability of the company without which no vicarious liability can be imposed has been appositely stated.

62. In the said case, the High Court followed the decision in Sheoratan Agarwal and, while dealing with the application under Section 482 of the Code of Criminal Procedure at the instance of Avnish Bajaj, the Managing Director of the company, quashed the charges under Sections 292 and 294 of the Indian Penal Code and directed the offences under Section 67 read with Section 85 of the 2000 Act to continue. It is apt to note that the learned single Judge has observed that a prima facie case for the offence under Sections 292(2) (a) and 292(2)(b) of the Penal Code is also made out against the company.

63. Section 85 of the 2000 Act is as under: -

*“85. **Offences by companies** - (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:*



Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.”

64. Keeping in view the anatomy of the aforesaid provision, our analysis pertaining to Section 141 of the Act would squarely apply to the 2000 enactment. Thus adjudged, the director could not have been held liable for the offence under Section 85 of the 2000 Act. Resultantly, the Criminal Appeal No. 1483 of 2009 is allowed and the proceeding against the appellant is quashed. As far as the company is concerned, it was not arraigned as an accused. Ergo, the proceeding as initiated in the existing incarnation is not maintainable either against the company or against the director. As a logical sequeter, the appeals are allowed and the proceedings initiated against Avnish Bajaj as well as the company in the present form are quashed.”

15. Under similar circumstances, the Hon’ble Supreme Court in **Sardar Trilok Singh v. Satya Deo Tripathi** reported as (1979) 4 SCC 396; **M. N. Ojha v. Alok Kumar Srivastav** reported as (2009) 9 SCC 682 and **Anup Sarmah v. Bhola Nath Sharma** reported as (2013) 1 SCC 400, has held that such matters are required to be quashed under Section 482 of the Code.



16. In the present case, the factual background and the circumstances, as have been discussed earlier, clearly indicates that to get over an adverse circumstance of having to repay the loan taken by the opposite party no. 2, he has resorted to filing of FIR/complaint case, which clearly amounts to abuse of the process of the Court.

17. In the present case, the reference with regard to demand of extortion becomes highly improbable for the reason that once the truck had already been taken by the Company, there cannot be any such demand by way of extortion and that too, of a vague amount of Rs. 10-15 lakhs and moreso, by the petitioners, who were mere employees of the Company and, thus, did not stand to gain anything personally by making such demand for extortion which would have resulted in dire consequences, for in their individual capacity they, would have to face criminal prosecution.

18. Coming to the present case, as cognizance has been taken only under Section 384 of the Indian Penal Code, the Court would indicate that the same is the penal provision for extortion which has been defined under Section 383 of the Indian Penal Code. For the purpose of ready reference Sections 383 and 384 of the Indian Penal Code are reproduced hereinbelow:



*“383. **Extortion.**- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”.*

*384. **Punishment for extortion.**—Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”*

19. From the above, it is clear that there has to be dishonest inducement or fear of injury. In the present case, there is only a vague allegation with regard to the petitioners demanding extortion with the threat of destroying the family and killing the opposite party no. 2. Further, Section 383 of the Indian Penal Code requires the act of delivery of property or valuable security by the victim to the accused. In the present case, there is no such allegation and rather it is admitted that there was only demand of extortion but not paid by the opposite party no. 2. Thus, in such view of the matter also, no offence can be said to be made out and the petitioner cannot be charged under Section 384 of the Indian Penal Code.

20. In this connection, the Court would refer to the judgment 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 categories have been enumerated where the



Court would interfere under 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 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.”

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

22. Similarly, the Hon’ble Supreme Court in **Indian Oil Corpn. v. NEPC India Ltd.** reported as **(2006) 6 SCC 736**, at paragraph no. 13, has held as under:

“13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.....”

23. Further, the Hon’ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as **(1977) 2 SCC 699**, at paragraph no. 7, has observed as under:

“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.....”

24. In light of the discussions made hereinabove, the Court finds that the present prosecution is *mala fide* and for oblique reasons and allowing the same would clearly be an abuse of the process of the Court and the present is a fit case where the Court is required to exercise its inherent power under Section 482 of the Code.

25. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 506(C) of 2012 (Trial No. 3185 of 2013), pending before the Court below at Jehanabad, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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