

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28628 of 2014

Arising Out of PS. Case No.-115 Year-2012 Thana- MADHUBANI COMPLAINT CASE
District- Madhubani

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Vishwa Nath Bhagat Son of Mahavir Bhagat Resident of Village - Utara, P.S.
- Saharghat, District - Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mohan Kumar Choudhary s/o Ganga Prasad Choudhary, Resident of village-Saharghat, District-Madhubani.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Gagan Deo Yadav, Advocate
For the Opposite party no. 2	:	Mr. Manish Kumar, Advocate
		Mr. Rohit Kumar no. 5, Advocate
For the State	:	Mr. Md. Arif, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 02-01-2019

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 application is being filed for quashing of the order dated 04.05.2013 passed by the arising out of Complainant Case No. 115 of 2012 in T.R. No. 3152/2014/3469/2013 whereby and where under the learned Judicial Magistrate- Ist Classs, Madhubani took cognizance against the petitioner under Sections 406 of the I.P.C.”

3. The allegation against the petitioner is that at the time
of settlement of liquor shop by the State, though it was done in his



favour, the security deposit was made by the complainant (opposite party no. 2) and further after the settlement, upon license being granted to the petitioner, he had given power of attorney to the opposite party no. 2 to run the same after taking compensation of Rs. 3,75,000/- but later, the Excise Department, upon complaint, had raided the premises of the petitioner and has found equipment for illegal manufacture of liquor due to which the license granted in favour of the petitioner was cancelled leading to loss of Rs. 8,51,880/- to the opposite party no. 2 which the petitioner is alleged to have refused to return.

4. Learned counsel for the petitioner submitted that the dispute is purely contractual in nature and relates to monetary affairs. It was submitted that the license being in the name of the petitioner, if at all it was cancelled, it was the petitioner who has suffered and further, if there was any agreement or power of attorney between the parties, the same being an agreement, any loss suffered has to be agitated before the civil Court of competent jurisdiction and filing of a criminal complaint case is an abuse of the process of law. It was submitted that in the complaint petition, the opposite party no. 2 has admitted that his demand for return of Rs. 8,51,880/- was not acceded to by the petitioner which clearly indicates that it is a purely money dispute.



5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the opposite party no. 2 has suffered loss due to criminal activity of the petitioner. However, he was not in a position to show as to what was the criminality in the episode and further as to why criminal proceeding be allowed to continue when clearly the grievance of the opposite party no. 2 is with regard to recovery of money which is to be done through the process of the Court on the civil side by instituting a suit for recovery of the amount before the civil Court of competent jurisdiction, there was no answer forthcoming.

6. 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. From the plain reading of the complaint, it is apparent that the dispute is purely with regard to money, which the opposite party no. 2 claims to have given to the petitioner which is alleged to have been not returned to him. The liquor license in favour of the petitioner and the alleged consequences suffered due to his act of being engaged in illegal manufacture of liquor has resulted in civil and penal consequences for the petitioner and any agreement or power of attorney between the petitioner and opposite party no. 2 was at a personal level and further, as per the complaint itself, some money



transaction took place, which the opposite party no. 2 claims is to be returned by the petitioner and is not being done, which, in the considered opinion of the Court, has to be agitated before the civil Court of competent jurisdiction and filing of a criminal complaint case is clearly an abuse of the process of the Court.

7. Accordingly, for the reasons aforesaid, the application is allowed.

8. The order dated 04.05.2013 passed by the Judicial Magistrate, Ist Class, Madhubani taking cognizance under Section 406 of the Indian Penal Code against the petitioner in Complaint Case No. 115 of 2012/ T.R. No. 3152 of 2014 and 3469 of 2013 stands quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

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