

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4622 of 2015

Arising Out of PS. Case No.-158 Year-2011 Thana- AIRPORT District- Patna

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Tapan Ray Chaudhary Son of Sri Phani Ray Chaudhary Director, J.P. Construction Private Limited, Old Kali Bari Road, Kish Nagar, Agartala, Pin-7990011 and also having at Administration Office at 8/47, East Mall Road, Green Valley, Kolkata -700080, West Bengal.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Binod Singh Son of Late Raj Kesari Singh Proprietor, Lumbani Travels and Aviation Services, Road No-4, Rajib Nagar, Patna- 800024.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Nand Kishore Prasad Sinha, Advocate
		Mr. Manoj Kumar, Advocate
For the Opposite Party/s :		Mr. Jharkhandi Upadhyay, App
For Opposite Party No.2:		Mr. Parth Gaurav, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 13-08-2019

The petitioner has sought for quashment of order dated 28.04.2014, as per supplementary affidavit, passed by Mr. Javed Alam, learned Judicial Magistrate, Patna, as well as entire criminal proceeding arising out of Patna Hawai Adda P.S. Case No.158 of 2011.

2. The petitioner is one of the accused in connection with Patna Hawai Adda P.S. Case No.158 of 2011, registered for the offence under Section 406/34 of the Indian Penal Code. After investigation, on the instruction of Dy. S.P. in his supervision note, charge sheet No.65 of 2014 dated 26.04.2014 was submitted and accordingly the Court-below



took cognizance.

3. It is worth to mention that petitioner had challenged the FIR of the present case before this Court in Cr. Misc. No.36779 of 2011 which was disposed of as infructuous, by order dated 22.07.2014, for the reason of completion of investigation of the case and submission of charge sheet.

4. The challenge is on the ground that the entire allegation disclose a case of pure civil dispute and criminal prosecution is abuse of the process of the Court.

5. Learned counsel for the informant resisted the prayer on the ground that once the Magistrate applied its judicial mind to proceed with the case, this Court, in exercise of the extra ordinary jurisdiction under Section 482 Cr.P.C., should not interfere with the impugned order, merely for the reason that a case of civil dispute is also disclosed, if the ingredients of criminal offence alleged is also made out.

6. According to First Information Report, the informant, who is proprietor of Lumbini Travels and Aviation Services was providing ground services to the King Fisher Airlines at Patna Airport. On 29.02.2010, the contract between the firm of the informant and King Fisher expired. Thereafter, J.P. Construction, the firm of this petitioner, started working as



ground service provider in pursuance of an agreement with King Fisher to provide the same ground service which the firm of the informant was providing. The informant handed over 2 step ladder, 2 BFL, 1 battery cart, 8 covered baggage trolleys, 5 Open trolleys to the petitioner and total cost of those items was Rs.12,97,000/-. The petitioner allegedly paid Rs.5,92,000/- and promised to pay the remaining Rs.7,05,000/- within two months. However, the rest amount was not paid and the petitioner removed all the articles from Patna to Calcutta.

7. On 20.02.2010 the firm of the petitioner wrote a letter to the firm of the informant. A copy whereof is at Annexure-3, which reads as follows:

“As per discussion with you we are interested in buying the equipment. The rates will be as follows:.....

Please go through the rate and confirm us the rate. As soon as the rates gets finalized we will forward you the payment terms. Waiting in anticipation for your kind perusal.”

8. Thereafter, to the telephonic talk with the petitioner the informant responded through letter dated



25.02.2010. A copy at Annexure-4. Relevant portion is as follows:

“Thanks for your interest shown in our equipment. You have quoted 4 lakh for 2 BFL and 1.92 lakh for 8 covered baggage trolleys.

Apart from this we have 2 step ladders, 5 open trolleys, 1 battery cart, and 1 tractor. I quote for these as follows :

.....

Your amount for 2 BFL & 8 Trolleys Rs.5,92,000/-

Grand total- Rs.12,97,000/-

I have not negotiated in your quoted amount and I hope you will also not negotiate in this quote too. You know the loss on these purchased equipment and the gain in few months for me and your gain in years together.

You can pay by cash or cheque or draft or send money through RTGS in Lumbini Travels and Aviation Services



account.

*Let us close this today for
ever.”*

9. The petitioner telephonically accepted the proposal. Thereafter, the informant through mail suggested mode of payment in two installments. A copy of the mail dated 26.02.2010 is at Annexure-5. On the same page there is reply of the petitioner which reads as follows:

*“Thank you for the reply. As
discussed I am sending you a cheque amount
of Rs.5,92,000/- towards 2 nos. BFL & 08
nos. Covered Baggage Trolleys. But for
Battery Cart we will confirm within two-three
months. Same goes for your Step Ladder &
Open Trolleys also.*

*We really are interested to do
long term business with you but kindly give
us some time to settle down a bit financially.”*

10. The conduct of the petitioner shown in the aforesaid conversation does not reveal a case of entrustment of property and criminal misappropriation of the same. The said deal in respect of the remaining referred items was still to be



completed. Since the petitioner had asked for further time to disclose his mind, once the petitioner would be financially capable. Thereafter, there is no supporting document of conversion between the parties. Therefore, it cannot be said that from the conduct of the petitioner, the informant could gather criminal and dishonest intention of the petitioner. Therefore, in my view, no criminal offence is made out against the petitioner.

11. However, it is made clear that the informant would be at liberty to pursue his grievance in the civil proceeding.

12. With the aforesaid observation, the entire criminal proceedings arising out of Hawaii Adda (Airport) Patna P.S. Case No.158 of 2011 stands, hereby, quashed.

13. Accordingly, the application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.08.2019
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