

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55967 of 2019

Arising Out of PS. Case No.-9 Year-2015 Thana- MUZFFARPUR COMPLAINT CASE
District- Muzaffarpur

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1. Dhurendra Prasad, aged about 51 years, Gender – Male.
 2. Ramanup Prasad @ Ram Anup Prasad, aged about 44 years, Gender – Male,
Both sons of Chirkut Prasad Resident of Village- Bhawanipur, Police Station- Sangrampur, District- East Champaran.

... .. Petitioners

Versus

1. The State of Bihar
2. Manoj Kumar, aged about 39 years, Male, Son of late Bhagnarayan Bhagat Resident of Village- Khoripakar, Police Station- Sahebganj, District- Muzaffarpur.

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr.Rajesh Ranjan, ADvocate
For the Opposite Party/s: Mr.Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 29-11-2019

Petitioners in the present case have invoked the inherent power of this court under Section 482 of the Code of Criminal Procedure to quash and cancel the order dated 01.06.2015 passed in Complaint Case No. 09/2015 by learned Judicial Magistrate, 1st Class, Muzaffarpur. By the impugned order the learned Magistrate has taken cognizance of the offence under Section 406 of the Indian Penal Code and decided to



issue summons to the petitioners.

2. The complainant – opposite party no. 2 has filed a complaint case in the court of learned Sub-Divisional Judicial Magistrate, West Champaran alleging there in that the petitioner no. 1 who happened to be the brother-in-law of his deceased wife convinced him that if he gives his tubewell boring machine to him, the petitioner no. 1 shall continuously pay to the complainant the money every month for the use thereof. It is alleged that the brother of petitioner no. 1 who is petitioner no. 2 in this case also came to the house of the complainant – opposite party no. 2 and convinced him in presence of the witnesses whereupon the complainant gave him the tubewell boring machine on 22.07.2014 on a monthly rental of Rs. 35000/-. It is alleged that the petitioners started working with that machine and for three months the complainant – opposite party no. 2 got the money but thereafter in the month of November the petitioners did not pay him and



when the complainant demanded the money, the petitioners told him that now a days no work is going on and as and when work will be available they will pay him his dues. It is alleged that in the month of December the complainant – opposite party no. 2 demanded back his machine and in this connection he went to the house of the accused – petitioners on 14.12.2014, where he did not find the machine and the petitioner no. 1 was also not present. Petitioner no. 2 told the complainant that he will not get his machine and whatever he has to do may do. It is the allegation of the complainant – opposite party no. 2 that the accused persons have sold the machine and thereby committed breach of trust.

3. In course of his statement on oath the complainant once again reiterated that he had received the money on account of rent for three months but thereafter he was not paid the monthly rent and his allegation is that when he went to the house of the accused persons on 14.12.2014, the accused no. 1 –



petitioner no. 1 was not present there, the machine was also not there and petitioner no. 2 told that the complainant will not get his money and the machine. In his solemn affirmation he has not alleged that the petitioners have sold the machine. Similarly the inquiry witnesses have also stated that these petitioners failed to pay the rent of the machine and in the Panchayati they did not turn up. One of the witnesses alleged that the petitioners are perhaps keeping the machine in their house. All the inquiry witnesses have stated and repeated the same allegation of non-payment of rent and keeping of the machine by the petitioners.

4. Learned counsel for the petitioners submits that in the year 2013 the complainant proposed to the petitioners to set up a business of installation of tubewell through drilling borewell and in this connection the opposite party no. 2 went to Sangrur Road, Bhawanigarh in Punjab to purchase the said machine. The cost of the machine and the accessories were informed at about Rs.



5,00,000/-, the petitioners were required to pay half of the amount. The petitioners initially transferred Rs. 1,90,000/- in the bank account of opposite party no. 2 in October 2013 and again on the request of opposite party no. 2 the petitioners transferred Rs. 1,20,000/- in the account of vendor of the machine. The petitioners transferred another Rs. 50,000/- in the account of opposite party no.2 and in this way the petitioners had paid Rs. 3,60,000/- through RTGS to the opposite party no. 2 and vendor namely, M/s Saiwant Agro Engineers, Bhawanigarh. The details of the transactions have been provided in the petition with the photocopies of the RTGS acknowledgment as Annexure '3' series.

5. It is further submitted that the opposite party no. 2 began to use the machine for commercial purposes and initially paid some amount to the petitioners by way of their share from the income of the machine but thereafter the complainant – opposite party no. 2 started avoiding the petitioners. A panchayati was



held on 17.11.2014 in which it was agreed that the said machine will be transferred to the petitioners on payment of Rs. 2,00,000/- but when after payment of the same the opposite party no. 2 refused to handover the said machine, on 19.11.2014 the petitioner no. 1 filed Complaint Case No. 2504/2014 in the court of learned Chief Judicial Magistrate, Mothiari which was subsequently referred to police giving rise to Sangrampur P.S. Case No. 18/2015 under Sections 406, 420, 467 & 468 of the I.P.C. against opposite party no.2. It is only after the opposite party no.2 came to know about the said case the present Complaint Case has been filed on or about 03.01.2015.

6. Learned counsel further submits that the opposite party no. 2 was using the machine for commercial purposes and as late as on 05.10.2014 he had worked for one Ratnesh Thakur of village Rampur Khajuriya and had granted him receipt also for the work in the name of his business enterprise Jai Baba



Bholanath Boring Machine. In this connection, the receipts have been enclosed as Annexure '5'.

7. Learned Counsel submits that in the facts of the present case on reading of the entire complaint petition no case under Section 405 I.P.C. which is punishable under Section 406 I.P.C. is made out. Learned counsel has also relied upon the judgments of Hon'ble Supreme Court in the case of **Smt. Rashmi Kumar Vs. Mahesh Kumar Bhada** reported in **1997 SCC (Cri) 415** and another judgment of Hon'ble Supreme Court in the case of **G. Sagar Suri Vs. State of U.P.** reported in **(2000) 2 SCC 636**.

8. In this case although the complainant – opposite party no. 2 has been duly served as per office notes however he has not entered appearance to oppose this application.

9. Having heard learned counsel for the petitioners and on a careful perusal of the records this court finds that in the complaint petition the complainant



- opposite party no. 2 has raised his grievance against the petitioners on account of non-payment of the monthly rent of the Boring Machine and according to him the petitioners had agreed to pay Rs. 35000/- as monthly rent which was paid to him for three months but thereafter no payment was made. Although in the complaint petition he alleged that the machine has been sold but subsequently and in the statement of the inquiry witnesses there is no allegation that the machine has been sold by these petitioners and no prima-facie material to that extent has been brought in course of deposition.

On the contrary, there are ample materials on the record which have remained uncontroverted which show that these petitioners who are related to the complainant - opposite party no. 2 had transferred substantial amount in the account of Saiwant Agro Engineers and also in the account of the complainant - opposite party no. 2. These are the documents which are



within the knowledge of the complainant – opposite party no. 2 but have not been denied. The petitioner no. 1 had lodged the case against complainant – opposite party no. 2 is also evident from the material available on the record.

10. In the present case, it is apparent from the materials on the record that both the parties are related to each other and at some point of time they had entered into some sort of business relationship and while doing that the present dispute has arisen. The allegations made in the complaint petition and in the statement of the witnesses do not disclose commission of an offence under Section 406 I.P.C. Sections 405 & 406 I.P.C. are quoted hereunder for ready reference:

"405. Criminal breach of trust – Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or



implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

406. Punishment for criminal breach of trust – Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

11. In the present case the allegations is not of handing over the machine to these petitioners by way of creation of a trust or to keep that in trust. The allegations at best is that the machine was handed over to the petitioners for working and in lieu thereof the complainant – opposite party no. 2 claimed entitled to get a sum of Rs. 35000/- per month. In fact his case is that he had received the rent for few months but thereafter it was not paid. In the opinion of this court, it is out and out a pure civil commercial dispute which has been given colour of a criminal proceeding. In this connection learned counsel for the petitioners has rightly relied upon the judgments of the Hon'ble Supreme Court



in the case of Smt. Rashmi Kumar (supra) to submit that *"the essential ingredients for establishing an offence of criminal breach of trust as defined in Section 405 and punishable under Section 406 IPC with sentence for a period up to three years or with fine or with both, are: [I] entrusting any person with property or with any dominion over property; [ii] the person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing of that property or willfully suffering any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust. "*

12. Further in the case of G. Sagar Suri (supra) on which reliance has been placed, the Hon'ble Supreme Court has held that *"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law.*



Before issuing process a criminal court has to exercise a great deal of caution.”

13. In the light of the aforesaid discussions, this court is of the considered opinion that the impugned order taking cognizance and issuance of summon to the petitioners if allowed to exist, would be a abuse of the process of court, therefore to stop the abuse of the process of court and to secure the ends of justice, the impugned order dated 01.06.2015 passed in Complaint Case No. 09/2015 by which the petitioners have been summoned is hereby set-aside.

14. The application is allowed.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.12.2019
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