

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 6859 of 2012

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Prashant Kumar Jha Son of Shri Arjun Jha Resident of Village- Brahmapura,
Post- Chatra, District- Madhubani, at present Deputy General Manager
(Marketing), Jakson Limited, 33, Bhawnani Commercial Complex, Rajendra
Nagar, P.S.- Kotwali, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Provas Roy @ Provas Kumar Roy Son of Late Pulin Bihari Roy, General
Secretary, Rabindra Parishad, Rabindra Bhawan, Near A.G. Office, Birchand
Patel Path, R.Block, - P.S. Kotwali, District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Bibhakar Tiwary, Advocate Mr. Sunil Kumar Singh, Advocate
For the Opposite Party/s	:	Mr. Dig Vijay Narayan Singh, Advocate Mr. Raj Kamal, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 04-01-2019

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 preferred for quashing the order dated 3.09.2011 passed by the court of Smt. Namita Chandra, Judicial Magistrate, Ist class, Patna in complaint case No. 1474©/2011 whereby and whereunder cognizance of the offence allegedly committed by the petitioner under section 420 of the Indian Penal Code and section 138 of the Negotiable Instruments Act has been taken.”

3. The petitioner at the relevant time was posted as Deputy General Manager of Jakson Limited, manufacturer of power generators. The allegation is that he along with other co-accused Hemant Kumar Das, proprietor of M/s Interface Industrial Systems had taken an amount of Rs. 10,75,000/- from the complainant (opposite party no. 2) for supply of 160 KW/200 KVA silent DG set of Jakson Company but the same was not delivered and the cheques returned by the co-accused of Rs. 10,75,000/-, as also Rs. 1,25,640/- towards interest were not honoured by the Bank.

4. Learned counsel for the petitioner submitted that the transaction was purely between the opposite party no. 2 and the other co-accused, who was proprietor of the firm, which was dealer for Jakson D.G. set at the relevant point of time. It was submitted that even in the complaint, it is admitted that the



amount was given to the proprietor of the dealer firm and the cheques which were returned was also by the dealer to the complainant and there is no role attributed to the Jakson Company, much less to the petitioner. Learned counsel submitted that the petitioner had joined the post on 21.02.2011 i.e., much prior to the cheques being given by the complainant to the other accused and the cheques returned by the other accused to the complainant. Learned counsel submitted that the petitioner thereafter has also left the firm and further that they had communicated to the opposite party no. 2 on 09.03.2011 that the co-accused was no longer the dealer of the Company. It was submitted that neither in the quotation nor the terms and conditions of offer, the petitioner or Jakson Company was ever referred, much less was party to the same. Learned counsel submitted that Interface not being dealer of Jakson, had thus, not written in the quotation to the opposite party no. 2 with regard to supply of Jakson D.G. set on 05.02.2010 as its dealership had ended on 31.12.2009.

5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the petitioner was the officer representing Jackson Company when the complaint was filed and, thus, he was also responsible for non supply and non return of the



money. Learned counsel submitted that the petitioner has also not brought on record the minutes of the meeting dated 03.03.2011, in which the petitioner also participated which indicates that the order for the D.G. set was placed with Jackson and even a tentative date of delivery has been indicated but still the same did not materialize in actual delivery of D.G. set. It was submitted that the petitioner representing the Jackson Company has rightly been made an accused and is also responsible, for he also did not fulfill his commitment, as is indicated from the minutes of the meeting dated 03.03.2011, with regard to delivery of D.G. set.

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. The petitioner was for a brief period posted as Deputy General Manager of Jackson Company at Patna and that too from 21.02.2011. In the present case, the entire transaction and the opposite party no. 2 giving cheques to Interface (co-accused) and the quotation by Interface to opposite party no. 2 and thereafter cheques being returned by Interface to the opposite party no. 2, all were admittedly prior to the petitioner assuming the post at Patna and more importantly, all such transactions were between the complainant and Interface without there being any involvement of



Jackson Company, as its dealership with Interface had ended on 31.12.2009 itself. Further, minutes of the meeting dated 03.03.2011, which has been heavily relied upon by learned counsel for the opposite party no. 2, from the plain reading of the same, though it is apparent that the petitioner also took part in the meeting but the same would not bind the Company, much less of any criminal nature with regard to transaction of non supply of the D.G. set or non return of the money. The petitioner or Jackson Company was never directly involved in the so called agreement/deal the opposite party no. 2 had with Interface and the same was on a one to one basis i.e., principal to principal basis, meaning thereby that in law, only the two parties i.e., the complainant and Interface were bound by the compromise between them and liable to consequences limited between the two of them. The petitioner and the Jackson Company, thus, cannot be held liable only on the basis of a so called meeting attended by the petitioner in the capacity of Deputy General Manager of Jackson Company. It may just be a gesture by the Company to agree to supply the D.G. set but the same would then depend on the transaction and agreement between Interface and Jackson, which is limited between Jackson Company and Interface and which has no bearing on the issue involved in the present matter. Just because



Interface may have given quotation and undertaken to deliver the D.G. set manufactured by Jakson company would not fasten the liability of any sort on Jakson company as far as the opposite party no. 2 is concerned, for non supply or non return of the money by the opposite party no. 2 as Jakson Company has never directly come into any agreement with regard to supply and also the money given by the opposite party no. 2 was not to Jakson but to Interface. Thus, from any angle, the deal is restricted only between the opposite party no. 2 and Interface through the co-accused and the same cannot be stretched either to the petitioner or Jakson Company. Moreover, in this context, the Court would like to indicate that the issue is also purely related to a commercial transaction between the parties. It has been held by the Hon'ble Supreme Court in the case of **Indian Oil Corpn. v. NEPC India Ltd.** reported as **(2006) 6 SCC 736**, at paragraph no. 13, that criminal prosecution should not be abused for settling of purely civil matters, especially commercial transactions. The relevant portion at paragraph no. 13 reads 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.....”



7. For the reasons aforesaid, the application is allowed.

The order dated 03.09.2011 passed by the Judicial Magistrate, Ist Class, Patna in Complaint Case No. 1474 (C) of 2011, by which cognizance has been taken under Section 420 of the Indian Penal Code and 138 of the Negotiable Instruments Act, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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