

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38617 of 2014

Arising Out of PS. Case No.-188 Year-2005 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Hari Singh S/o Sardar Bhag Singh

2. Harbans Singh S/o Hari Singh

Both residents of Mohalla - Shankar Nagar, P.O. - Ramna, P.S. - Mithanpura,
Dist. - Muzaffarpur.

... .. Petitioner/s

Versus

1. State Of Bihar

2. BICICO through its Dy. Manager, Indira Bhawan, 4th Floor, Ram Charitra
Singh Path, Boring Canal Road, P.S. S. K. Puri, District Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Sr. Advocate with
Mr. Bhola Kumar,
Mr. Ashish Sinha and
Mr. Dhananjay Prasad, Advocates

For the State : Mr. Jharkhandi Upadhyay, APP

For the O.P. No. 2 : Mr. Nirmal Kumar No. 2, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 16-01-2019

Heard learned counsel for the petitioners; learned A.P.P.
for the State and learned counsel for the opposite party no. 2.

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



“That this is an application on behalf of the petitioners for quashing the order dated 25.1.2005 passed by the learned Chief Judicial Magistrate, Patna, in Complaint Case 188 (M) of 2005 filed on 25.1.2005, taking cognizance under sections 403, 406, 409, 420, 425, 504 and 34 Indian Penal Code, against the petitioners and the same is at present pending in the court of Sri Ratan Kumar Singh, Judicial Magistrate I, Patna for trial.”

3. The allegation against the petitioners is that on the one hand they had taken loan from the complainant Company and on the other hand had started removing plant and machinery from the Unit.

4. Learned counsel for the petitioners submitted that this is a purely civil dispute between the loanee and loaner which has been given the colour of criminal case, which is an abuse of the process of the court. It was submitted that the petitioners had got only Rs. 51 Lakhs out of Rs. 60 Lakhs sanctioned and further that they have repaid about Rs. 21 Lakhs. It was further submitted that the Unit has been taken over by the Bihar Industrial Area Development Authority (hereinafter referred to as the ‘BIADA’) and was also sold to a third party. Learned counsel submitted that the matter with regard to the power of BIADA to take over the Unit is now *subjudice* before the Hon’ble Supreme Court. Learned counsel submitted that the certificate case instituted by the



opposite party no. 2 against the petitioners has been quashed by the Court. Learned counsel further submitted that F.I.R. has also been lodged by the opposite party no. 2 alleging removal of plant and machinery from the Unit.

5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the contention of learned counsel for the petitioners is absolutely misplaced. Learned counsel for the opposite party no. 2 submitted that the petitioners removing their plant and machinery from the Unit was a criminal act as all those articles were hypothecated/mortgaged to the opposite party no. 2 and without their consent or knowledge removal of the same is definitely a criminal offence. It was further submitted that initially the opposite party no. 2 had moved the local police station for lodging of the F.I.R. but the same not having been accepted, the present complaint case has been filed. Learned counsel submitted that the certificate case was initially quashed by the Court for the reason that at the relevant point of time there was no District Certificate Officer. It was submitted that now a District Certificate Officer has been posted and the matter is pending before him. However, it was submitted that for recovery of loan amount a certificate case is relevant but that would not absolve the petitioners from their criminal liability of having removed the



plant and machinery .which were mortgaged/ hypothecated to the opposite party no.2.

6. Learned counsel for the petitioners, by way of reply, submitted that if certificate case has been revived, the opposite party no. 2 will have its remedy before the Certificate Officer for recovery of whatever amount may be due from the petitioners against the loan taken by them from the opposite party no. 2 but the criminal proceeding should not be allowed to proceed.

7. Learned counsel for the opposite party no. 2, by way of rejoinder, submitted that the contention of learned counsel for the petitioners that once a certificate case is there the criminal case will not proceed, is incorrect for the reason that in the certificate case, the money would be recovered but in the present case, the criminality of the whole episode, inasmuch as the petitioners removing their plant and machinery which were hypothecated/mortgaged to the opposite party no. 2 is concerned, the liability on the criminal side shall be gone into. It was further submitted that initial loan of whatever amount the petitioners had taken, which, according to learned counsel for the petitioners themselves, have been returned to the extent of Rs. 21 Lakhs is absolutely not fit to be considered for the reason that the loan had to be returned in 15 half yearly instalments, i.e., within a period



of 7 ½ years and such loan being sanctioned in the year 1992 and till date an amount of only Rs. 17,48,000/- being repaid, which is almost 1/3rd of even the principal amount, compared to over Rs. 307 Lakhs being due in the year 2004 itself, is clearly inadequate and shows, both incompetence and *mala fide* on the part of the petitioners in not returning the loan amount taken by them from the opposite party no. 2.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. As has rightly been submitted by learned counsel for the opposite party no. 2 that in the present case, both civil and criminal liability are clearly made out from the complaint itself, for which, for the civil liability, a certificate case is pending which shall be considered and decided on its own merits, but as far as the criminal liability is concerned, where the petitioners are alleged to have removed the plant and machinery from the Unit which were hypothecated/mortgaged to the opposite party no. 2 and which could not have been done without their consent, clearly criminal charges are made out against them.

9. The Hon'ble Supreme Court in a catena of decisions has held that there may be instances where there can be both civil



and criminal liability arising out of the same transaction and in such cases, the Court ought not to interfere in the criminal proceeding at the initial stage, which should be allowed to be taken to their logical conclusion.

10. In this connection, the Court deems it relevant to refer to the decision of the Hon'ble Supreme Court in the case of **Indian Oil Corporation v. NEPC India Limited** reported as **2006 (6) SCC 736**, where at paragraph no. 12 the principles relating to exercise of jurisdiction under Section 482 of the Code have been enumerated which is quoted hereinbelow:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few- Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana vs. Bhajanlal, Rupan Deol Bajaj vs. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar vs. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan vs Vijay Kumar, and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an



assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

11. From the aforesaid it is clear that a given set of facts may make out a civil wrong as also a criminal offence. Mere fact that the complaint relates to a commercial transaction or breach of contract for which a civil remedy is available or has been availed,



is not by itself a ground to quash the criminal proceedings. The test is whether the allegation in the complaint disclose a criminal offence or not. In the present case, the Court finds that criminal offence is disclosed in the complaint.

12. Further, in the case of **Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd.** reported as **(2008) 13 SCC 678**, the Hon'ble Supreme Court at paragraph no. 22 has held as under:

“22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the process of Court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal namely to force the accused to pay the amount due to the complainant immediately. The Courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The Courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.”



13. For reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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