IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45270 of 2014

Arising Out of Case No.-784 Year-2013 Thana- KATIHAR C.A. District- Katihar

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1. K.P. Singh, Son of Late Ram Babu Singh
2. Anand Madhukar, Son of- Kamal Priya Nandan Prasad Singh
   Both are resident of Mohalla - Laljee Tola, P.S. -- Gandhi Maidan, District - Patna.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. Smt. Manju Devi Wife of Satya Narayan Pandit, Resident of- Gandhi Gram, P.S. - Barari, District - Katihar.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. S. K. Lal, Advocate Mr. Pritish Kumar Lal, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.
For the O. P. No. 2	:	Mr. Sanjay Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 01-02-2019

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 (hereinafter referred to as the 'Code'), for the following relief:

> *"That the petitioners seek indulgence of this Hon'ble High Court or quashing the order dated 27.05.2014 passed by Sri B.B. Rai, Judicial Magistrate, 1st Class Katihar, in C.A. Case No. 784 of 2013/C.S. Case No. 1174-14 where under*

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> *the learned magistrate has found sufficient material to proceed with the case as prima facie case is made out under section 403, 417 of the Indian Penal Code against persons named in the complaint petition and so far other sections in complaint petition is concerned it appears to be "Superadded". The learned magistrate has thus ordered to summon the petitioners."*

3. The allegation against the petitioners, as contained in the complaint filed by the Opposite Party No. 2, is that they had got into an agreement with the Opposite Party No. 2 for supply of *makhana* for about 15 Lakhs but out of that only 7 Lakhs and odd were paid by the petitioners to the Opposite Party No. 2 and it is further alleged that when she went to ask for the money, she was abused and sent away without making payment.

4. Learned counsel for the petitioners submitted that this is a classic case of abuse of the process of the court where, without there being any element of criminal wrongdoing, a complaint case has been instituted and further, that even cognizance has been taken on the same. Learned counsel submitted that from the entire reading of the complaint, it is apparent that it is a purely civil dispute relating to an arrangement between the parties for supply of *makhana* and alleged non-payment. It was submitted that at best, it is a dispute between the parties concerning money. Learned

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counsel submitted that for the same, the only forum available was the civil court of competent jurisdiction by filing a money suit.

5. Learned A.P.P. fairly submitted that the matter relates to purely a money dispute, which is civil in nature.

6. Learned counsel for the Opposite Party No. 2 submitted that the Opposite Party No. 2 used to supply *makhana* to various persons, including the petitioners, and in the past, after supply, money was given to her but in the present transaction despite *makhana* being supplied to them huge amount was withheld and when she asked for money she was turned away and the money also not paid. To a direct query of the Court as to how there is any criminal charge made out against the petitioners as the same relates to only a dispute with regard to payment among the parties and that too, without any written or formal agreement having been brought on record to support the case that the m*akhana* for a certain amount was paid and less money received by the Opposite Party No. 2, learned counsel for the Opposite Party No. 2 was not in a position to show otherwise.

7. 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. As has rightly been submitted by learned counsel for the petitioners, the dispute

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is purely civil in nature relating to money. For the said, no criminal proceeding is justified in the eyes of law.

8. Further, the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335,** at paragraph no. 102, has enumerated categories where the Court ought to exercise its inherent power under Section 482 of the Code. The same reads as under:

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> > *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or*

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make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the omission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the

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> *basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
>
> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

9. The present case, in the considered opinion of the Court, is covered under categories 1 and 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

10. Moreover, the Court finds it useful to refer to the decision of the Hon'ble Supreme Court in **Indian Oil**

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Corporation v. NEPC India Ltd. reported as **(2006) 6 Supreme Court Cases 736,** where at paragraph no. 13 it has been held 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……."

11. Further, the Hon'ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as **(1977) 2 Supreme Court Cases 699** at paragraph no. 7 has observed as under:

> "7……..In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the; ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to. achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the, ends of mere law though justice has got to be. administered according to laws made by the legislature. The compelling necessity for making these

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> observations is that without a proper realisation of the object and purpose of the provision which seeks to. save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

12. In the aforesaid background, the Court finds that the prosecution is *mala fide*, untenable and solely intended to harass the petitioners.

13. Accordingly, the application is allowed. The entire proceeding arising out of C.A. Case No. 784 of 2013/C.S. Case No. 1174-14, including the order taking cognizance dated 27.05.2014, stand quashed.

(Ahsanuddin Amanullah, J)

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