

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51977 of 2014

Arising Out of Case No.-26701 (C) Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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Pradeep Kumar Sonthalia Son of Sri Ram Swaroop Sonthalia R/o Chanchani
Colony, Dhahiya Road, Dhanbad - 826001 Jharkhand.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Chandra Prakash Gupta S/o Sri Sushil Kumar Gupta R/o Bagaha Bazar,
Bank Road, Near Central Bank of India, P.O. and P.S. - Bagaha Bazar,
District - West Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate with
Mr. Alok Kumar Agrawal, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

For the O. P. No. 2 : Mr. Radha Mohan Pandey with
Mr. Chandra Shekhar Verma, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 29-03-2019

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

*“That the present application has been filed for
quashing of the order taking cognizance vide order dt.
27.10.2014 passed by the Smt. Sangeeta Rani, the
learned Judicial Magistrate 1st Class, Patna in
connection with Complaint Case No. 26701 (C)/14
whereby and where under the learned Magistrate has*



been pleased to take Cognizance for the offences U/s 420 of the Indian Penal Code and 138 of the Negotiable Instrument Act and has also summoned the petitioner to face trial.”

3. The allegation against the petitioner and his two brothers, who are co-accused, is with regard to non-encashment of two cheques totalling Rs. 1,68,00,000/- in favour of the company of the opposite party no. 2, i.e., M/s Trishul Construction.

4. Learned counsel for the petitioner submitted that the present complaint case, as far as he is concerned, is totally false and frivolous and with the purpose to harass him and also exert undue pressure. Learned counsel submitted that the complaint itself would reveal that there was some alleged agreement between the firm of the opposite party no. 2 i.e., M/s Trishul Construction and M/s Sri Ram Marketing Services, which is a partnership firm between the other two brothers of the petitioner, who are also accused. Learned counsel submitted that the petitioner at no point of time was ever associated, either with M/s Sri Ram Marketing Services, i.e., the firm of his brothers or M/s Trishul Construction, which is the partnership firm of the opposite party no. 2. Learned counsel drew the attention of the Court to Annexure -3/A, which is copy of the deed /partnership dated 03.02.1998 between the other two brothers of the petitioner of M/s Sri Ram Marketing Services in which he has no role. Learned counsel further drew the attention



of the Court to the audit report dated 31.03.2011, copy of which is at Annexure-4, with regard to M/s Sri Ram Marketing Services in which also name of the persons having share in the said firm discloses that the petitioner is not one among them. Learned counsel submitted that just because he is the full brother of the two other co-accused, who are partners in M/s Sri Ram Marketing Services, making him an accused in the present case is malicious and *mala fide*. Learned counsel submitted that from the admitted facts, the two cheques totalling Rs. 1,68,00,000/- had been issued by the authorized signatory of M/s Sri Ram Marketing Services and, thus, non-enchashment or any grievance relating to such issue can only be against M/s Sri Ram Marketing Services and the officers of the said firm but not against the petitioner, who has no concern with the said firm. Learned counsel further submitted that even the complaint as filed is not maintainable for the reason that the law requires the firm/company against which there is grievance to be made an accused and only then any officer or employee or person connected with the working of such firm/company can be made accused, but in the absence of the firm itself, the complaint would not be maintainable. For such proposition, learned counsel relied upon the decision of the Hon'ble Supreme Court in **Aneeta Hada v. Godfather Travels & Tours (P) Ltd.** reported as (2012)



5 Supreme Court Cases 661, the relevant being at paragraphs no. 58 and 59. Further, for the same proposition, learned counsel also relied upon a decision of the Hon'ble Supreme Court in **Anita Malhotra v. Apparel Export Promotion Council** reported as **(2012) 1 Supreme Court Cases 520**, the relevant being at paragraph no. 23, where it has been held that since the appellant had resigned as Director of the company much prior to the issuance of the Cheque, she could not be proceeded against and the High Court under its jurisdiction under Section 482 of the Code ought to have quashed the criminal proceeding.

5. Learned A.P.P. submitted that though by not ensuring encashment of the cheque issued by the firm, a case under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act') is made out to warrant criminal prosecution but as far as the petitioner is concerned, he fairly submitted that the materials produced by him are sufficient to indicate that he has no connection with M/s Sri Ram Marketing Services which had issued the cheques in favour of the firm of the opposite party no. 2. With regard to the company not being made a party, he submitted that the Hon'ble Supreme Court has held that without the company, the complaint could not be maintainable, and, thus, on



this score also, the complaint should not have been entertained by the Court.

6. Learned counsel for the opposite party no. 2 submitted that the petitioner, being the full brother, cannot plead innocence. It was submitted that the brothers are involved in various activities and, thus, the opposite party no. 2 is not expected to be aware as to who actually manage the affairs of M/s Sri Ram Marketing Services and the liability on behalf of such firm would also rest on the petitioner. He further submitted that in terms of Sections 138, 139 and 140 of the Act, there is presumption in law that the holder of the cheque received the cheque for the discharge, in whole or in part, of any debt or any other liability. Further, he submitted that it would not be a defence that the drawer had no reason to believe when he issued the cheque that may be dishonoured on presentation. Learned counsel submitted that Section 138 of the Act provides for punishment for a cheque which may be drawn by a person on account maintained by him with a banker for payment and is returned by the Bank unpaid for various reasons, including insufficiency of funds, as has been indicated by the Bank in the present case. Learned counsel relied upon a decision of the Hon'ble Supreme Court in **K. Bhaskaran v. Sankaran Vaidhyan Balan** reported as (1999) 7 Supreme Court



Cases 510, the relevant being at paragraphs no. 14 and 15, for the proposition that under Section 138 of the Act only 5 things are required to be seen i.e., drawing of the cheque; presentation of the cheque to the Bank; returning of the cheque unpaid by the drawee Bank; giving of notice in writing to the drawer of the cheque demanding payment of the cheque amount and failure of the drawer to make payment within 15 days of the receipt of the notice. It was submitted that in the present case, all such five ingredients having been satisfied, cognizance/charge under Section 138 of the Act is justified. However, on a specific query of the Court as to how, when in the absence of M/s Sri Ram Marketing Services being made a party, the complaint was maintainable in view of the judgment of the Hon'ble Supreme Court in **Aneeta Hada** (supra) and further in view of the petitioner producing documents on oath in the present application with regard to him not being in any capacity associated with M/s Sri Ram Marketing Services, to which there is no denial in the counter affidavit filed on behalf of the opposite party no. 2, how he could be held liable, learned counsel did not have any answer. Learned counsel submitted that in the legal notice sent to the accused, including the petitioner, in the reply he had not stated that M/s Sri Ram Marketing Services was a registered firm and, thus, the opposite



party no. 2 had not made it a party, which is also a suppression of fact and a sign of fraud committed by the petitioner.

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.

8. On the short legal point of maintainability of the complaint case and the fact that the petitioner is nowhere connected with the firm which is said to have issued the cheque in favour of the firm of the opposite party no. 2, the prosecution against the petitioner is totally without any legal basis.

9. The petitioner has brought on record copy of the deed of partnership of his two brothers who have formed the firm M/s Sri Ram Marketing Services. Further, he has also brought on record the statement of accounts in the audit report for the year ending 31.03.2011 in which also the name of only his two brothers is mentioned as partners. This has not been controverted in the counter affidavit filed by the opposite party no. 2 in the present proceeding. As far as plea of learned counsel for the opposite party no. 2 that in the legal notice to the petitioner, he had not disclosed that M/s Sri Ram Marketing Services was a registered firm and that is why he could not make the firm a party is absolutely an untenable submission. The petitioner not being involved in the



affairs of M/s Sri Ram Marketing Services, he was not obliged to disclose a fact with regard to M/s Sri Ram Marketing Services to the opposite party no. 2 as it is the duty cast upon the person who is making a complaint to be aware of the facts. Moreover, when the petitioner was nowhere connected with the firm M/s Sri Ram Marketing Services, he cannot be charged with not having disclosed the fact that Ms/ Sri Ram Marketing Services was a registered partnership firm.

10. Coming to the factual aspect, the opposite party no. 2 in the complaint has himself disclosed that he had got an agreement with M/s Sri Ram Marketing Services and that the cheques were also given to his firm Ms/ Trishul Construction by Ms/ Sri Ram Marketing Services under the signature of the authorized signatory. Thus, on the basis of admitted facts also, the relationship was restricted between M/s Sri Ram Marketing Services and M/s Trishul Construction and if at all there was any grievance of M/s Trishul Construction, the same would only and solely be against M/s Sri Ram Marketing Services and its officers/employees. The petitioner being nowhere associated with M/s Sri Ram Marketing Services, just because he is the full brother of the other two co-accused who may be partners of the firm M/s Sri Ram Marketing Services, would not give any cause of action to



any person with regard to any misconduct or wrong act on the part of M/s Sri Ram Marketing Services or its officers/employees. The Court finds that the decisions relied upon by the learned counsel for the petitioner in **Aneeta Hada** (supra) and **Anita Malhotra** (supra) squarely cover the facts and circumstances of the case and are in support of the contentions of learned counsel for the petitioner.

11. As far as the case of **K. Bhaskaran** (supra) is concerned, which has been relied upon by learned counsel for the opposite party no. 2, it is only on the point what is required to constitute an offence under Section 138 of the Act. The legal issue is neither an issue in the present case nor is required to be gone into in view of the facts of the present case and what has been discussed in this order hereinabove. There cannot be any dispute with regard to the legal position and the circumstances which are required to be fulfilled for an offence to be made out under Section 138 of the Act. The same has only been described in the aforesaid case in **K. Bhaskaran** (supra) by the Hon'ble Supreme Court. In the present case, the only issue involved is whether the petitioner, who has shown by legally admissible official documents, copies of which have been brought on record on oath in the present case and not controverted in the counter affidavit filed by the opposite party



no. 2, that he neither was nor is connected in any way with M/s Sri Ram Marketing Services against which any cause of action may lie in law with the firm of the opposite party no. 2, the petitioner cannot be charged for any criminal complicity with regard to the allegation of any cheque being issued by M/s Sri Ram Marketing Services in favour of the firm of the opposite party no. 2 not being encashed.

12. 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 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 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.”

13. The present case, in the opinion of the Court, is covered under category 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

14. 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 a 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..... ”



15. In the background of the discussions made hereinabove, the Court finds that the prosecution against the petitioner is *mala fide*, untenable and solely intended to harass him.

15. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 26701 (C) of 2014, including the order dated 27.10.2014 passed by the Judicial Magistrate, 1st Class, Patna, by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J)

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