IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.84646 of 2019

Arising Out of PS. Case No.-1 Year-2015 Thana- PATNA COMPLAINT CASE District-Patna

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1. Ajay Kumar Gupta @ Ajay Gupta S/o Bhu Prakash Gupta Managing Director, Adroit Financial Services Pvt. Ltd, R/o 401/402, 4th Floor, Angel Mega Mall, Kaushambi, P.S.- Kaushambi, Dist.- Ghaziabad, U.P.
2. Atul Kumar Gupta S/o Bhu Prakash Gupta Director, Adroit Financial Services Pvt. Ltd, R/o 401/402, 4th Floor, Angel Mega Mall, Kaushambi, P.S.- Kaushambi, Dist- Ghaziabad, U.P.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Markandeya Singh S/o Late Sheo Prasanna Singh, R/o C/24, Vijay Nagar, Road, No.2, Hanuman Nagar, P.S.- Patrakar Nagar, Patna, Bihar.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Mrigank Mauli, Adv.
Mr. Sanket, Adv.
Mr. Prince Kumar Mishra, Adv.
For the Opposite Party-State : Mr.Anil Kumar Singh No. 1, APP
For the Opposite Party No.2 Mr. Vijay Shankar Srivastva, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

2 23-01-2020 Heard the learned counsel for the petitioner Shri Mrigank Mauli, the learned APP for the State Shri Anil Kumar Singh No.1 and the learned counsel for the Opposite Party No.2, Shri Vijay Shankar Srivastva.

2. The petitioners apprehend their arrest in connection with Misc. Complaint Case No. 1(C) of 2015, dated 17.08.2015 for the offence under Section 20 of Depositories Act, 1996.

3. The complainant/ Opposite Party No.2 herein has alleged in his complaint bearing Complaint Case No. 1(C) of

2015, pending in the Court of learned Additional District & Sessions Judge-XVII, Civil Court, Patna, that accused no.1 i.e. Adroit Financial Services Private Limited (hereinafter referred to as the "Adroit") is a Stock Broker company and a trading Member of National Stock Exchange of India Limited (hereinafter referred to as the "NSE") and is also a participant of National Securities Depository Limited (hereinafter referred to as the "NSDL") and M/S Credent Securities i.e. the Accused No.6 is Sub-broker of Adroit.

4. It is stated in the said complaint that the accused Sanjay Kumar got in touch with the complainant in the beginning of the month of January 2008 as being the Patna Branch Manager of M/S Credent Securities, whereafter the complainant had taken a decision to make investment in stocks and then he had got himself registered as a client of the aforesaid company. Subsequently, the complainant and his wife had signed forms for opening a Demet account as also the agreement form, whereafter the complainant was assigned a Demet account number and a trading account number was also assigned and then the same was activated on 06.02.2008. It is further stated in the complaint petition that the complainant had carried out stock trade transaction in his account on the aid and misleading advice as also wrong information given by the accused/ officials of Adroit and M/S Credent Securities, in gross violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act, 1992") as also the Rules and Regulations made there-under. It is further alleged in the complaint that the accused persons had not supplied the documents mandatory or non-mandatory, executed by the complainant within a period of 7 days, as required under the law, however, after making complaint before the Chairman, NSE, the Adroit had supplied a copy of the client registration form after several years. It is also alleged that Tripartite Agreement dated 24.07.2008 was not supplied resulting in prejudice to the complainant, apart from the accused persons fraudulently and dishonestly creating false email ID, false electronic records such as Contract Notes etc. The complainant has stated in the complaint that on account of several omissions and commissions on the part of the accused persons, the capital amount of the complainant to the tune of Rs. 36 lacs has been damaged. It is also alleged that fake signatures of the complainant and his wife were obtained on delivery instruction slips containing blank portions, except their printed parts and thereafter, the accused persons had entered the details of stock trade transactions behind the back of the complainant and his wife, causing loss to the complainant. It is also alleged that Adroit was not granted any trading terminal to operate from Patna during the period July, 2007 to July 2008, nor it had any authorized software for its usage in carrying out securities from Patna, hence, securities trades were carried out from Patna during the aforesaid period, in flagrant contravention of SEBI Circular. Again during the period 10.10.2010 to 30.03.2012, when the certificate of M/S Credent Securities had been suspended, it had connived with Adroit and had carried out securities trades from Patna Branch in a clandestine manner. It is further alleged that Adroit with consent and knowledge of M/S Credent Securities and other accused persons has violated the provisions of the Depositories Act, 1996. Lastly, it is alleged that though the complainant had not carried any trade from very inception of opening of his account in the year 2008 till the closure of account in the year 2013, nonetheless, trades have been fraudulently carried out by the accused persons without the knowledge of the complainant, hence the same are unauthorized and the accused Adroit as also M/S Credent Securities are liable to compensate the complainant.

5. The learned counsel for the petitioners has submitted that the cognizance has already been taken by the learned court below against the accused persons in the aforesaid complaint case by an order dated 3.3.2016, for the offence punishable under Section 20 of the Depositories Act, 1996. It is submitted that the learned court below had issued non-bailable warrants qua the petitioners vide order dated 20.09.2017, however, the same was quashed by a co-ordinate Bench of this Court by a judgment dated 9.11.2017, whereafter the petitioners had filed an application under Section 205 read with Section 317(1) of the Cr. P.C., seeking exemption from personal appearance, before the learned court below, however, the learned court below has rejected the same vide order dated 29.08.2019, hence the petitioners have reasonable apprehension that they may be arrested in connection with the aforesaid Complaint Case No. 1(C) of 2015, instituted under Section 20 of the Depositories Act, 1996 and pending before the learned court of Additional District and Sessions Judge-XVII, Patna. It is further submitted that the petitioners are having clean antecedent, except two complaint cases, which have been filed against the petitioners by the very same Opposite Party No.2. It is further submitted that the complainant has filed one after another 17 civil and criminal cases for the same occurrence in between the year 2008 to 2013. It is also submitted that no case is made out even upon a bare perusal of the complaint petition and considering the allegations levelled therein, under the Depositories Act, 1996, inasmuch as the complainant and his wife had admittedly signed all the necessary documents before opening the account with the stock broker i.e. Adroit in the year 2008 and had carried out trades from 2008-13 without any hindrance and/ or objections with respect to the service being provided by the stock broker as well as his sub-broker. It is submitted that the duties of a stock broker and its sub–broker is to provide a platform to the complainant to trade in Securities market and not to guide him through purchase and sale of sharers. It is further submitted that the account of the complainant has shown “Nil” during the entire period of five years i.e. 2008 to 2013 and the complainant had issued several cheques to continue his trades in securities market through his stock broker and its sub-broker and during the course thereof, more than 100 cheques were deposited through the stock brokers and sub-brokers during a period of five years, thus, the allegations levelled by the complainant in his complaint are belied. The learned counsel for the petitioners has further submitted that the complaint petition, for the same and similar allegations, as levelled in the present complaint, had been initiated by the complainant/ opposite party no.2 before the statutory two tier Arbitration proceedings against the petitioners wherein the learned Arbitral Tribunal and appellate Arbitral Tribunal have already decided the issues by holding that the complainant had also failed to discharge his obligations and the complainant should be held responsible for major part of the loss eventually suffered in the securities market. It is also submitted that since the entire transactions had taken place through cheques exchanged between the parties, the allegation of fraud and cheating qua the petitioners was only concocted and an after thought. It is also contended by the learned counsel for the petitioners that the allegations leveled in the complaint case are of civil nature and the present criminal prosecution is an abuse of the process of law, since the complainant has initiated a criminal action for settling his private civil dispute. Lastly, it is submitted that the petitioners are managing a stock broker Company with a client base of 50,000 and are having offices spread over 250 cities including Mumbai, hence the petitioners are not likely to abscond from the proceedings, in case privilege of anticipatory bail is granted to them.

6. Per contra, the learned counsel for the Opposite

Party No.2, though had, initially sought to raise a preliminary objection regarding the maintainability of the present anticipatory bail petition, however, faced with the order of cognizance, passed by the learned court below and the order passed by the learned court below dated 29.07.2008 whereby and whereunder the petition filed by the petitioners under Section 205 of the Cr. P. C. read with section 317(1) of the Cr. P.C. has been rejected, has chosen to forego the preliminary objection, being raised on behalf of the complainant. It is submitted by the learned counsel for the Opposite Party No.2 that a bare perusal of the complaint petition would show that the complainant and his wife have been duped by the accused persons including the petitioners herein and apparently a clear-cut case is made out against the petitioners herein under Section 20 of the Depositories Act, 1996. In the alternative, it is submitted that since the complaint case filed by the complainant, as aforesaid, has to be tried by the special court for the purposes of providing speedy trial of offences under the Depositories Act, 1996, as per Section 22C of the aid Act, 1996, the trial court be directed to expedite the hearing and the petitioners herein be directed to appear before the learned court below on each and every date so fixed by the learned court below in the aforesaid complaint case proceedings.

7. At this juncture, the learned counsel for the petitioners has submitted that the petitioners are ready to co-operate in the ensuing trial and would definitely appear on each and every date so fixed, while reserving their rights to assail the order dated 29.08.2019 passed by the learned court below in the aforesaid complaint case rejecting the petition filed by the petitioners under Section 205 Cr. P. C. read with Section 317(1) of the Cr. P.C.

8. Having regard to the facts and circumstances of the case and considering the submissions advanced by the learned counsel for the parties, this Court finds that *prima facie* the allegations levelled by the complainant, are in the nature of civil dispute, nonetheless since the learned counsel for the petitioners has undertaken on behalf of the petitioners that they would definitely appear before the learned court below in the aforesaid complaint case on each and every date so fixed, coupled with the fact that the petitioners are having deep roots in the society and are not likely, either to tamper with the evidence, which in any view of the matter, is mostly documentary in nature, or intimidate the witnesses during the course of the ensuing trial, I deem it fit and proper to admit the petitioners to the privilege of anticipatory bail.

9. Let, the petitioners above named, in the event of arrest or surrender before the learned court below, within a period of eight weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/- each with two sureties of the like amount each to the satisfaction of the learned Additional District & Sessions Judge-XVII, Civil Court, Patna in connection with Misc. Complaint Case No. 1(C) of 2015, subject to the conditions as laid down under Section 438(2) of the Cr. P.C.

(Mohit Kumar Shah, J)

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