

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.737 of 2018

Arising Out of PS. Case No.-496 Year-2017 Thana- JEHANABAD COMPLAINT CASE
District- Jehanabad

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1. Shiva Poly Tubes Pvt. Ltd. a company registered under the Companies Act, 1956 now under 2013 Act having its place of business at 307, Narayan Plaza, Exhibition Road, P.S. Gandhi Maidan, Town and District Patna through its Managing Director Sri Ramesh Chandra Gupta S/o Late Sriram Gupta, R/o Flat No.502, Santosha Apartment, Bandar Bagicha, P.S.- Kotwali, Town and District- Patna.
 2. Ramesh Chandra Gupta S/o Late Sriram Gupta R/o Flat no.502, Santosha Apartment, Bandar Bagicha, P.S.- Kotwali, Town and District- Patna.
 3. Binay Kumar Singh S/o Late Ram Kripal Singh, R/o 69, Patliputra Colony, P.S.- Patliputra Colony, Town and District- Patna.
 4. Vijay Kumar Sinha S/o Late Ram Naresh Lal, R/o Mohalla- South Mandiri, P.S.- Buddha Colony, Town and District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Md. Afsar Imam S/o Late Md. Akhtar Hussain, R/o at C/o Hindustan Pipe Bhandar, P.G. Road, Opposite Idgah, P.S.- Jehanabad, District- Jehanabad.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate
		Mr. Alok Kumar Agrawal, Advocate
For the Opposite Party/s :		Mr. Anil Prasad Singh, APP
For the O.P. No. 2	:	Mr. Yogesh Chandra Verma, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 20-09-2021

Heard Mr. S.D. Sanjay, learned Senior Advocate

for the petitioners and Mr. Yogesh Chandra Verma, learned

Senior Advocate for the Opposite Party No. 2. The State is

represented by Mr. Anil Prasad Singh, learned APP.



2. This application has been filed for quashing the order dated 06.11.2017 passed in Complaint Case No. 496 of 2017 by which cognizance has been taken under Sections 195, 196, 211, 120B, 420, 504 and 499 of the Indian Penal Code and Sections 63/65 and 68 of the Copy Right Act, 1957.

3. The complainant/opposite party no. 2 claims to be the Managing Director of Freedom Plast Private Limited having its unit at B-38, Industrial Area, Hajipur (Vaishali). It has been alleged by him that he has, since 2004, started manufacturing plastic pipes. However, before that, he had taken the dealership of Shiva Poly Tubes Pvt. Ltd. on the request of petitioner no. 3. He had thereby agreed to sell the products of Shiva Poly Tubes Pvt. Ltd. through his firm viz. M/s. Hindustan Pipe Bhandar at Jehanabad. After becoming the manufacturer of the plastic pipes himself, he had returned the dealership to the petitioner no. 1/Shiva Poly Tubes Pvt. Ltd. Per force, the accused persons had to appoint another dealer viz. M/s. Janta Tube



Well for the district of Jehanabad for the sale of their product. It is in this context that it has been alleged that the petitioners, with the help of the local dealer, filed a case against the complainant and his brother with the allegation of attempting to pass off his goods as the goods of the petitioners. It was falsely claimed by the petitioner no. 3 in the FIR viz. Jehanabad P.S. Case No. 344 of 2005, that on information from Janta Tube Well that duplicate pipes under the brand name of the Shiva Poly Tubes was being used for laying down Government tubewell. On this information, petitioners no. 3 and 4 are said to have visited the place/site and found that fake pipes under the name of Shiva PVC pipes were being used. It has also been alleged that it was wrongly claimed by the petitioners no. 3 and 4 that those fake pipes were sold/provided by the Hindustan Pipe Bhandar, a proprietorship firm owned by complainant/opposite party no. 2.



4. The allegation made by the petitioners no. 3 and 4 about the younger brother of the complainant of assaulting petitioners no. 3 and 4 and taking away the fake plastic pipes is also incorrect.

5. Be that as it may, it was alleged in the complaint petition that opposite party no. 2 and his brother were put on trial and the learned Trial court *vide* judgment and order dated 30.05.2017, acquitted him and his brother of all the charges. It has thus been alleged that the FIR was lodged against them out of grudge for his not agreeing to sell the product of the petitioners. Because of such false accusation, the complainant/opposite party no. 2 suffered severe losses and because of the publication of news regarding such case, the complainant was refused loan by the State Bank of India. All these happenings caused mental harassment to the complainant/opposite party no. 2.

6. The learned counsel for the petitioners has submitted that the averments made in the complaint



petition clearly envisages that the present litigation has been brought about after the opposite party no. 2 and his brother were acquitted in the trial based on the FIR lodged by petitioner no. 3.

7. It has further been submitted that there is no dispute about the fact and the allegation made by the petitioner no. 3 that the opposite party no. 2 was appointed as a dealer of petitioner no. 1/company for the district of Jehanabad. The product of the petitioner no. 1 has ISO 9001:2000 standard with an ISI mark. The product of the petitioner/company is in great demand especially in Government works. The dealership of the petitioners/company was returned by the opposite party no. 2, he started selling his own product with the brand name of the petitioners. It was on an information provided on 23.12.2005 that fake PVC pipes were being used in laying the tube well that the FIR was registered against opposite party no. 2 and his brother viz. Md. Changez Khan @ Md. Qaisar Khan for the offences under Section



420 IPC and Sections 63, 65 and 68 (A) of the Copy Rights Act, 1957.

8. The opposite party no. 2 and his brother, it has been argued were chargesheeted and were put on trial.

9. Mr. S.D. Sanjay, learned Senior Advocate after referring to the various paragraphs of the Trial court judgment acquitting the opposite party no. 2 and his brother, has submitted that despite five witnesses having categorically deposed before the trial court that fake Shiva brand UPVC pipes were being used in laying the tube well at a particular site, the opposite party no. 2 and his brother have been acquitted.

10. The judgment would clearly reveal, it has been argued, that evidence has not been appreciated by the trial court in correct perspective.

11. The reason given by the Trial court for acquitting of opposite party no. 2, it has been argued, is that there was no deception of any person by opposite party no. 2 of having made any false or misleading



representation and that from the facts alleged and evidence garnered, no offence under any one of the Sections of the Copy Rights Act was made out. For coming to that conclusion, the Trial court relied on the fact that there was no Test Report on record regarding the seized PVC pipes being fake ones and those not being the product of the petitioners/company. The allegation of the opposite party no. 2 of selling such fake pipes under the trade-dress of the petitioners/company has been rejected on the ground that there was no documentary proof to show that the pipes were actually purchased from the shop owned by the opposite party no. 2. Some of the witnesses on behalf of the petitioners, during cross-examination, are said to have stated before the police that the receipt regarding the purchase of such fake pipes from the shop of the opposite party no. 2 was lost.

12. Apart from this, the Trial court perhaps was of the view that at the site where the tube well was being installed, there was presence of Government Engineers but



none of them were made accused in this case. This, the trial court has pronounced, indicates that the accusation against the opposite party no. 2/accused persons was made because of vindictiveness and professional rivalry as opposite party no. 2 also had a product in the market which was equally good, if not better.

13. The argument of Mr. Sanjay, therefore is that every acquittal of an accused in a criminal case does not *ipso facto* mean that the accusations were false and that it was made for the purposes of injuring or damaging the accused persons. Cases are won or lost on production of evidence and its appreciation. In a criminal case, the prosecution has to prove the allegation beyond all reasonable doubts. The test of "beyond all reasonable doubts" is very onerous one and the prosecution might fail but such failure of the prosecution is not necessarily on the ground of false accusation, but because of such accusation not being supported with a strong enough evidence. However, such acquittals cannot be taken as a ground for



prosecuting the informant/complainant for the offences under Sections 195, 196, 211 read with Section 120B IPC and Sections 420, 499 and 504 of the Indian Penal Code.

14. Sections 195 and 196 of the Indian Penal Code provide for punishment for giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment for a term of seven years or upwards and of corruptly using or attempting to use as true or genuine evidence, any evidence which an accused knows to be false or fabricated respectively.

15. Similarly Section 211 of the Indian Penal Code provides for prosecution and punishment of an offender who, with the intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person or falsely charging any person for having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person. If such accusation is relatable



to an offence punishable with death or imprisonment of life or imprisonment for seven years upwards, a higher penalty has been provided.

16. These are offences, which are committed in or in relation to a proceeding in a court of law.

17. By way of abundant precaution, the framers of the Code have provided for a provision under Section 195 that no court shall take cognizance of any offence punishable under Sections 193 to 196, 199, 200, 205 to 211 and 228 or for any criminal conspiracy to commit or to attempt to commit or for the abatement of any such offence except on the complaint in writing of that court or by such officer of the court as that court may authorize in writing in his behalf or of some other court to which that court is subordinate.

18. Thus, private complaint with respect to charges under Sections 195, 196, 211 and 120B in relation to the aforesaid three offences could not have



been entertained by the court below for taking cognizance under those Sections.

19. Per force, Section 195 of the IPC has to be read along with Section 340 Cr.P.C. which provides the procedure for cases mentioned in Section 195.

20. The provision of Section 340 Cr.P.C. is being extracted here in below for the sake of completeness.

340. Procedure in cases mentioned in Section 195. -

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence



is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section 195.

21. The underlying purpose of enacting Sections 195 and 340 Cr.P.C. appears to be to control the tendency of private parties to start criminal prosecution because of a revengeful desire to harass the opponent. Thus, certain offences have been selected for the courts' control because of their direct impact on



the judicial process. The Hon'ble Supreme Court in *Patel Laljibhai Somabhai vs. State of Gujarat* 1971 (2) SCC, 376 has observed that as a general rule, the courts initiate such prosecution for the expediency in securing the interest of justice but only if there is a reasonable foundation for the charge and there is a reasonable likelihood of conviction.

22. Thus, it has been argued that the cognizance under Sections 195, 196, 211 and 120B of the IPC could not have been taken by the court on the basis of a private complaint.

23. It has further been submitted that the offences under Sections 420, 499 and 504 IPC are also not made out from the facts disclosed in the complaint petition as well as in the deposition of witnesses on behalf of the complainant/opposite party no. 2.

24. Section 420 IPC provides for punishment for cheating and dishonestly inducing the persons so deceived to deliver any property or a valuable security.

25. By no stretch of imagination can it be said, it has been argued, that from the materials available on record, any



offence under Section 420 IPC could at all be said to have been made out.

26. Similarly Section 499 IPC provides for punishment for defamation. The present circumstance of the petitioner no. 3 having filed a case against opposite party no. 2 and his brother which ended in acquittal would come within first 5th , 8th and 9th exception provided to the Section. It is no defamation to impute anything which is true concerning any person if it be for public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact. It is not a defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a court of justice or respecting the conduct of any person as a party, witness or agent in any such case or respecting the character of such person, as far as his character appears in that conduct and no further. It is also no defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of the accusation. If an imputation is



made on the character of another provided that the imputation is made in good faith for the protection of the interests of the person making it or any other person or for the public good is no defamation.

27. Thus, lodging a criminal case against opposite party no. 2 which ended in acquittal, would not come within the definition of the offence of defamation.

28. Similarly Section 504 IPC provides for punishment to a person who intentionally insults and thereby provokes any person, intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence.

29. It has been submitted that none of these offences for which cognizance has been taken can be brought home only on the ground of the criminal case lodged against opposite party no. 2 having ended in acquittal.

30. As opposed to the aforesaid contentions, it has been argued on behalf of opposite party no. 2 by Shri Yogesh Chandra Verma, learned Senior Advocate that the Trial court



judgment of acquittal cannot be questioned on any account as the acquittal is based on the fact that there was no Test Report available in record with regard to the seized pipes and that there was no document to show that those pipes were purchased from the shop of opposite party no. 2. No document was also brought on record to support the charge of breach of Copy Rights Act.

31. The petitioners, therefore, knew that the basic ingredients for launching prosecution in the aforesaid Sections were not available but still such a criminal case was lodged only for the purposes of damaging the reputation of opposite party no. 2 as a businessman. The aforesaid malicious prosecution was tried to be supported by giving false evidence before a court of law.

32. It was further argued that the bar of Section 195 Cr.P.C. is not for the purposes of saving the dishonest act of the petitioners, but it is only a guard against frivolous litigation. The learned Magistrate has not gone wrong in relying upon the averments made in the complaint petition as also on the deposition of the witnesses in the inquiry under Section 202 for



taking cognizance under Sections 195, 196, 211, 120B, 420, 504 and 499 of the Indian Penal Code and Sections 63, 65 and 68 of the Copy Rights Act, 1957 against the petitioners.

33. Assuming that for three of the offences in which cognizance has been taken, a private complaint was not entertainable but with respect to offences under Sections 420, 499 and 504 of the IPC, there is no bar in a private party lodging a complaint against the wrong doer.

34. After having heard the learned counsel for the parties, this Court is of the view that the criminal prosecution launched against opposite party no. 2 vide a police case may have ended in acquittal but that by itself would not make the petitioners liable for being prosecuted for offences under Sections 195, 196, 211, 120B, 420, 504 and 499 of the Indian Penal Code and Sections 63, 65 and 68 of the Copy Rights Act, 1957.

35. No court could have taken cognizance under Sections 195, 196, 211 and 120B of the Indian Penal Code on a private complaint in view of the bar provided under Section 195



(1b) of the Cr.P.C. So far as the charges under Sections 420, 499 and 504 of the IPC or Sections 63, 65 and 68 of the Copy Rights Act are concerned, those do not appear to have been made out from the facts of the case.

36. Nobody appears to have been cheated and as noted above, lodging a criminal case which ends in acquittal would not *ipso facto* become a ground for prosecuting a person for offence of defamation.

37. It has not been proved before the court of law which has appreciated the evidence that there was any intention on the part of the petitioners to launch the prosecution only for the purposes of damaging and harassing the opposite party no. 2 and his brother. The element of conspiracy had to be proved which has not been done. There is nothing on record also to indicate that there was an intention to provoke opposite party no. 2 to commit breach of peace because of such provocation.

38. Thus, taking every allegation to be *ex facie* true, none of the offences can at all be said to have been made out.



39. As noted above, cognizance under Sections 195, 196, 211 and 120B IPC would be bad for the reason of the bar under Section 195(1b) Cr.P.C.

40. While arguing this case, Mr. S.D. Sanjay, learned Senior Advocate informed this Court that the appeal filed against the judgment and order of acquittal in favour of opposite party no. 2 has been withdrawn.

41. This information is of no relevance for deciding this case. It is the choice of the petitioners whether to pursue a revision against an order which is not to their liking. That fact perhaps would not be relevant for deciding the present application.

42. The petitioner may, if so advised, prefer an appropriate application for damages or tortious liability but lodging of the present criminal case against the petitioners appears to be an act of revenge where for some of the offences a private complaint is not entertainable and some of the offences are not made out even if the facts alleged in the complaint petition are accepted to be *ex facie* true.



43. For the reasons aforestated, the order of cognizance does not appear to be sustainable in the eyes of law and, therefore, is set aside.

44. The application stands allowed accordingly.

(Ashutosh Kumar, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.09.2021
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