IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53644 of 2019

Arising Out of PS. Case No.-1626 Year-2005 Thana- PATNA COMPLAINT CASE District-Patna

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Sharad Kumar Khetan Son Of Late S.N. Khetan @ Narayan Khetan Resident of Dr. T.N Banerjee Road, P.O-GPO, PS-Gandhi Maidan, District-Patna.

... ... Petitioner

Versus

1. The State of Bihar
2. Ajit Kumar Singh Son of Late J.K. Singh Resident of Indu Shree House, East Boring Canal Road, P.S-Buddha Colony, Patna.

... ... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Akashdeep, Advocate
		Mr.Shyameshwar Kumar Singh, Advocate
For the State	:	Mr.Choubey Jawahar, Addl Public Prosecutor
For opposite party no.2		Mr. Rakesh Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
CAV JUDGMENT
Date : 08-09-2022

This application has been filed for quashing the entire criminal prosecution of the petitioner including order dated 7.10.2005 taking cognizance of the offence punishable under sections 420 and 406 of the IPC and order dated 19.4.2016, rejecting the prayer for discharge under section 245 of the Cr.P.C. in Complaint Case No. 1626(C) of 2005.

Prosecution case in short is that pursuant to advertisement dated 27.10.2002 published in Hindustan paper by one R.S.Kohli of MAC Lab ltd. inviting application for appointment of Consignee Agent, Distributors and Stockists the complainant sent his application to said R.S.Kohli at Mumbai for appointment as consignee agent only. It is further alleged that one K.K.Girotra, all India Sales Manager of MAC Lab Ltd. Came to Magadh Hotel, Patna and contacted the complainant on telephone. The Complainant was shown samples of medicine of MAC Lab. Ltd. And said K.K.Girotra, in presence of petitioner, demanded Rs. 20 lacs as security money. However, after negotiation, the amount agreed was Rs.8 lacs for being appointed as Zonal Super Distributor Bihar OTC Division and accordingly, Letter dated 3.12.2002 was given to complainant by said R.S.Kohli with regard to terms and conditions. On the order of said K.K.Girotra, cheques/demand drafts were issued in the name of Trade Wing (India) against money receipt and medicines worth Rs.7,73,349.19 was supplied by petitioner on 3.12.2002 and 9.12.2002, against Invoice No. MF-3 dated 3.12.2002 and 9.12.2002. It has also been stated therein that said K.K.Girotra and petitioner informed complainant that a Sales team was being constituted and distributors appointed for Bihar for sale of medicine and if the medicines were not sold, then company would take back the same and refund the security money. It is further alleged that no sales team or distributor was appointed as a result of which medicines could not be sold. It is lastly stated that despite request, the accused persons have neither taken back the medicine nor refunded the security money, thereby cheating the complainant and misappropriating the entire amount.

It is submitted on behalf of the petitioner that both the orders of the court below, i.e., the cognizance order dated 7.10.2015 as well as revisional order dated 19.4.2016, are bad in law and fit to be set aside. It is further submitted that on going through the complaint itself it is apparent that the petitioner had nothing to do and was no way concerned with the transaction in question and is being compelled to face the agony of a criminal prosecution. It is also apparent that the entire transaction took place between the complainant and other accused persons of the Company. The petitioner is simply a proprietor of the firm, namely, Trade Wings (India) which acts as a consignee agent of different companies. It is further submitted that the said firm only acts as a link between the manufacturer/supplier and the purchaser for supply of goods or merchandise and in the bargain earns service charges. It is specifically stated that admittedly the petitioner is neither the partner nor is in any way associated with the functioning, management or control of the company i.e. MAC Lab Ltd. That apart, the complainant himself states in his complaint that the promise or assurance to either appoint the complainant as a consignee agent or super distributor or take back the medicines and refund the security deposit, was made by the officials of the Company and not by the petitioner. It is next contended that both the courts failed to consider as to whether the allegations made in the complaint constitute offence punishable under sections 406 and 420 of the IPC. Learned counsel submits that the court below failed to consider that initiation and continuance of criminal proceeding in question is in gross abuse and misuse of the process of law.

Learned counsel appearing for opposite party no.2 opposed the submissions made on behalf of the petitioner. He submits that the petitioner has challenged order dated 19.4.2016 passed by the Sub Divisional Judicial Magistrate, Patna in Complaint Case No. 1626(c) of 2005 by which prayer for discharge under Section 245 of the Cr.P.C.7. was rejected, before the Sessions Judge, Patna vide Cr.Revision No. 463 of 2016, which was also rejected by the Additional Sessions Judge IX, Patna vide order dated 14.6.2019. After rejecting the revision application petitioner in the garb of filing a petition udner section 482 of the Cr.P.C. for quashing the entire proceeding has virtually filed a second revision application which is barred under sectin 397(3) of the Cr.P.C. and on this ground alone instant case is fit to be dismissed by this Court. It is further contended that on mere reading of the complaint it is clear that during meeting and negotiation between this answering opposite party as well as the officials of the MAC Laboratory the petitioner was also present. The security money was deposited in the account of M/S Trade Wings (India) run and managed by the petitioner. Hence, petitioner is the main beneficiary who utilized the money deposited by the answering opposite party and dishonestly with criminal intention cheated the answering opposite party in a pre-planned manner. Moreover, till date security deposit has also not been refunded to the complainant which clearly attracts ingredients of sections 406 and 420 of the IPC.

Having heard learned counsel for the petitioner, the State and the opposite party no.2 and on going through the materials on record, this Court is of the opinion that the learned trial courts has rightly refused to discharge the petitioner and the revisional court has committed no error in confirming order passed by the trial court taking cognizance and not discharging the accused persons. The complaint goes to show that on the inducement made by the petitioner, the complainant having believed, made payment of Rs.8 lacs for supply of goods as specifically admitted by the complainant in his purchase order vide letter dated 3.12.2002. It is not in dispute that till date security money has not been refunded to the complainant. It is also not disputed that the money in question has been deposited in the account of the firm of which petitioner was the proprietor. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging, nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. In this case, it is not in dispute that on the inducement of the petitioner, complainant invested the money in the account of the petitioner's firm which has not been refunded to the complainant till date.

In view of the aforesaid facts and circumstances of the case, I am not inclined to accede to the prayer of the petitioner. Accordingly, being devoid of merit, this petition is dismissed.

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	NAFR
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