

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2119 of 2017

Arising Out of PS. Case No.-189 Year-2016 Thana- FATUA District- Patna

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1. Upen Tulsiyan Son of Late Ganesh Lal Tulsiyan, R/o 5A, Robinson Street, P.S.- Shakespeare Serani, District- Kolkata, West Bengal.
 2. Dilip Kumar Jha, Son of Late Chatura Nand Jha, resident of 7B, Piknik Garden, Tamli Line, P.S.-Tiljala, District-Kolkata, West Bengal.

... .. Petitioner/s

Versus

1. The State of Bihar through Senior Superintendent of Police, Patna.
- 2.1. Savita Devi, wife of Late Nand Kishore @ Pappu Yadav
- 2.2. Nitesh Kumar, son of Late Nand Kishore @ Pappu Yadav
Both R/o Suryamill Station Road, P.S.- Fathua, District- Patna.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 1130 of 2017

Arising Out of PS. Case No.-189 Year-2016 Thana- FATUA District- Patna

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1. Satyanarayan Tulsiyan S/o Late Ganesh Lal Tulsiyan, R/o 5A, Robinson Street, P.S.- Shakespeare Serani, District- Kolkata, West Bengal.
 2. Kailash Chander Agarwal @ Kailash Chander Agarwala, S/o Late Manohar Lal Agarwala, R/o 1A, Cornfield Road, Ballygunge S.O, P.S.- Garaihat, District- Kolkata, West Bengal.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department, Patna
- 2.1. Savita Devi W/o late Nandkishore Prasad @ Pappu Yadav
- 2.2. Nitesh Kumar Son of late Nandkishore Prasad@ Pappu Yadav Both R/o of Suryamill Station Road, P.S. Fathua, Distt. Patna.

... .. Respondent/s

Appearance :

(In Criminal Writ Jurisdiction Case No. 2119 of 2017)

For the Petitioner/s : Mrs. Soni Shrivastava, Adv.
Mr. Ravi Bhardwaj, Adv.

For the State : Mr. Md. N. H. Khan, SC-I

For the respondent no.2 : Mr. Jagdish Prasad Singh, Adv.

(In Criminal Writ Jurisdiction Case No. 1130 of 2017)

For the Petitioner/s : Mrs. Soni Shrivastava, Adv.
Mr. Ravi Bhardwaj, Adv.

For the State : Mr. Md. N. H. Khan, SC-I

For the respondent no.2 : Mr. Jagdish Prasad Singh, Adv.



CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT

Date : 29-06-2022

(1) Heard learned counsel for the petitioners, learned Standing Counsel for the State of Bihar and learned counsel for the private respondents.

(2) The petitioners in both the applications have preferred their respective applications for quashing the First Information Report in connection with Fatuha P.S. Case no.189 of 2016 registered under sections 420, 406 and 120B of the Indian Penal Code.

(3) Both the applications arising out of the same F.I.R., are being disposed of by this common order.

(4) As per the prosecution case, contained in typed written statement dated 12.5.2016 of the informant addressed to the Officer-in-charge of police station Fatuha alleges inter alia that on the request made by one of the Directors Dilip Kumar Jha, a written agreement was entered into on 15.1.2013 between the informant and Scope Vincom Industries Private Limited (hereinafter referred to as “the Company” in short) according to which an advance of Rs.2,42,000/ was given by the tenant and three months rent by way of advance was given. It is stated that on account of the father of the informant having fallen down on



the staircase, the informant went to Delhi for the medical treatment of his father where he stayed for 1½ years. The arrears of rent was not paid by the accused persons and thus, the informant requested the Directors that his godown be vacated by them. On this, Satyanarayan Tulsiyan and Upen Tulsiyan told him on telephone that they were sending Rs.5 lacs in cash and Rs.10 lacs by way of post dated cheques. They assured that the remaining amount will also be paid soon and that they would vacate the godown by 15.1.2016. The informant states that the godown was vacated on 14.1.2016 but the arrears of rent of the godown was not paid by them and the cheques which were deposited by the informant were returned by the Bank stating that there was instructions to stop payment. Notices were given. A total arrears of Rs.39,41,800/ of rent remains due and payable to the informant and the same has not been paid by the Directors as a result of criminal conspiracy and cheating. On the statement of the informant, the F.I.R. being Fatuha P.S. Case no.189 of 2016 was registered on 12.5.2016 under sections 406, 420 and 120B of the Indian Penal Code.

(5) The case of the petitioners in short is that from reading of the F.I.R. and even accepting the allegations made therein, the dispute is purely a civil dispute relating to arrears of



rent. Even accepting the allegations made in the F.I.R., no offence of cheating or of criminal breach of trust is made out against the petitioners. It is further submitted that for the same allegations, a complaint case being Complaint Case no.1171 (C) of 2016 was filed on 12.4.2016 in the Court of the learned Chief Judicial Magistrate, Patna wherein by order dated 20.6.2016, cognizance has been taken by the learned Judicial Magistrate 1st Class, Patna under section 420 of the Indian Penal Code. Copies of the petition of complaint case and the order taking cognizance have been brought on record as Annexures-2 and 3 to the petition. It is thus submitted that in view of a criminal case already pending for substantially the same offence, the dispute between the parties being purely a civil dispute relating to arrears of rent and no offence having been made out from reading of the F.I.R., the F.I.R. be quashed and the instant application be allowed.

(6) The application is opposed by learned Standing Counsel appearing for the State and learned counsel appearing for the private respondents. It is submitted by learned counsel appearing for the private respondents that the informant (respondent no.2) died during pendency of this application and was substituted vide order dated 7.5.2018. Counter-affidavits



have been filed on behalf of the substituted private respondents in both the applications. The case of the private respondents was that prayer for quashing of the F.I.R. is premature as the investigation is still going on. It was as a result of instructions to stop payment that the cheques were not cleared by the Bank and thus a clear cut case under section 420 of the Indian Penal Code and section 138 of the N.I. Act is made out against the accused persons.

(7) Heard Smt. Soni Shrivastava, learned counsel for the petitioners, Md. Nasrul Huda Khan, learned Standing Counsel no.1 for the State of Bihar and Mr. Jagdish Prasad Singh, learned counsel for the private respondents, in both the applications.

(8) As per the case of the prosecution in the F.I.R., the informant entered into an agreement (copy of which is at page no.22 of the writ petition) on 15.1.2013 with Scope Vincom Industries Private Limited. As per the agreement, godown measuring 11000 sq. ft. was taken on rent by the Company at the rate of Rs.11 per sq. ft. per month starting from 15.1.2013 for a period of 11 months. An advance of Rs.2,42,000/ was paid by the Company to the informant by way of advance which was to be adjusted against the arrears or



damages and the balance amount had to be returned by the informant at the time of the rented premises being vacated by the Company. Further case of the informant is that after 1 ½ years, on rent remaining due, the informant demanded the arrears of rent against which they promised to pay Rs.5 lacs in cash and Rs.10 lacs by post dated cheques and stated that they would vacate the premises/godown by 15.1.2016. The godown was vacated on 14.1.2016 but the arrears of rent was not paid and the 20 post dated cheques which were given by the Company was returned by the Bank with the instructions that there was instructions to stop payment. Thus, it was the case of the prosecution that a total arrears of rent to the tune of Rs.39,41,800/ remains due against the four Directors who have cheated the informant.

(9) From perusal of the F.I.R., it would transpire that it is an admitted fact that an agreement of tenancy had been entered into between the informant and the Company pursuant to the agreement dated 15.1.2013 and the godown/rented premises of the informant has been vacated by the Company on 14.1.2016. The informant clearly states that arrears of rent to the tune of Rs.39,41,800/ remains due and payable. Thus, in the opinion of the Court, the dispute is one which is purely a civil



dispute between the parties relating to arrears of payment of rent.

(10) It may be added here that although as per the F.I.R., the Company vacated the rented premises of the informant on 14.1.2016, the rent agreement dated 15.1.2013 which is part of the F.I.R. is only for 11 months. Thus, from 15.1.2013 till 14.12.2013.

(11) Learned counsel for the petitioners in support of her contention has relied upon the judgments in the case of Murari Lal Gupta vs. Gopi Singh [(2005) 13 SCC 699], Hridaya Ranjan Prasad Verma and others vs. State of Bihar and another [(2000) 4 SCC 168], Satishchandra Ratanlal Shah vs. State of Gujarat and another [(2019) 9 SCC 148], Sutapa Chakraborty and others vs. State of Bihar and another [2012 (3) PLJR 817] and the judgment dated 7.3.2022 passed in S.L.P.(Cr.) no.783 of 2020 (Neetu Singh and others vs. State of U.P. and others).

(12) In response, learned counsel for the private respondents in support of his contention has relied on the judgment in the case of Purushottam Kumar Sinha v. The State of Bihar and Another [2018 (1) PLJR 367].

(13) From perusal of the contents of the legal notices sent on behalf of the informant and which are enclosed as part



of the F.I.R. at pages 18 to 21 to the petition, it would transpire that the cheques with the memo stating that the payments had been stopped had been received by the informant on 29.3.2016 and it was subsequent thereto that the complaint being Complaint Case no.1171 (C) of 2016 was filed in the Court of the learned Chief Judicial Magistrate, Patna by the complainant (original informant in the F.I.R. herein) on 12.4.2016. The informant chose not to raise the issue of the cheques not being honoured in the complaint (Annexure-2).

(14) It would be important to note here that the Company with whom the informant entered into a rent agreement has not been arraigned as an accused in the instant F.I.R.. The Hon'ble Supreme Court in the case of R. Kalyani vs. Janak C. Mehta and others [(2009) 1 SCC 516] held as follows:

41. If a person, thus, has to be proceeded with as being variously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the Company as well as the person responsible for the acts of the Company."

(15) Further, the Hon'ble Supreme Court in the case of S.K. Alagh vs. State of Uttar Pradesh and others [(2008) 5 SCC 662] held as follows:



“19. As, admittedly, drafts were drawn in the name of the company, even if appellant was its Managing Director, he cannot be said to have committed an offence under [Section 406](#) of the Indian Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself.”

(16) From reading of the F.I.R. and accepting the contents thereof, in the opinion of the Court, no offence either under section 420 of the Indian Penal Code nor under section 406 of the Indian Penal Code is made out against the petitioners. There is no allegation of cheating against the petitioners from the very inception nor is there any allegation in the F.I.R. of entrustment of any property or the person entrusted dishonestly misappropriating or converting the same to his own use.

(17) Further, it would also be relevant to take note of the observation of the Hon'ble Supreme Court in the case of Indian Oil Corporation v. NEPC India Ltd. and others [(2006) 6 SCC 736]:

“13. While on this issue, it is necessary to take notice of a growing tendency in business



circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. In [G. Sagar Suri vs. State of UP](#), this Court observed :

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under [Section 482](#) of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."



(18) The Hon'ble Supreme Court in the judgment in the case of State of Haryana and others vs. Bhajan Lal and others [1992 Supp (1) SCC 335] held as follows:

“102. In the back drop of 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 commission 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.”

(19) Having heard learned counsel for the parties and taking into consideration the contents of the F.I.R., the Court is of the opinion that the case is one purely a civil dispute between the parties relating to payment of arrears of rent for the rented premises of the original informant (since deceased) and for which the original informant had already filed Complaint Case no.1171 (C) of 2016 wherein cognizance has been taken by order dated 20.6.2016 passed by the learned Judicial Magistrate 1st Class, Patna. Thus, in the opinion of this Court, the case of the petitioners would fall under the categories 1, 2, 3, 4 and 7 as laid in paragraph no.102 of the judgment of the Hon’ble Supreme Court in the case of Bhajan Lal (supra). Thus, the registration and continuance of F.I.R. being Fatuha P.S. Case



no.189 of 2016 (District Patna) would be an abuse of the process of the Court and is liable to be quashed.

(20) Accordingly, the F.I.R. of Fatuha P.S. Case no.189 of 2016 (District Patna) registered on 12.5.2016 under sections 420, 406 and 120B of the Indian Penal Code is hereby quashed.

(21) Both the applications are allowed.

(Partha Sarthy, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	21.3.2022
Uploading Date	
Transmission Date	

