

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.548 of 2017

Arising Out of PS. Case No.-127 Year-2017 Thana- MOTIHARI TOWN District- East
Champaran

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1. Ashraf Khan and Anr S/o Late Ramzan Khan, R/o Henry Bazar, P.S. Town, Motihari, District - East Champaran, at Present Kachhi Sarai, P.S. Mithanpura, District - Muzaffarpur
 2. Dr. Abhishek Tiwary, S/o Dr. B. Tiwary, R/o Juran Chapra, P.S. Mithanpura, District - Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Home Secretary, Bihar, Patna and Ors
2. The Director General of Police, Bihar, Patna
3. The Superintendent of Police, East Champaran at Motihari
4. The Officer - in - Charge, Town, P.S. Motihari
5. Neeraj Kumar, S/o Late Bachha Prasad Singh, R/o Mohalla - Srikrishna Nagar, P.S. Nagar Motihari, District - East Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shailesh Kumar
For the Respondent/s : Mr. Prabhat Kr. Verma AAG3

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

10 04-04-2023

I.A. No. 01 of 2022

The following relief has been sought in the Interlocutory Application No. 01 of 2022:- “That the present Interlocutory Application is being filed for quashing of order dated 03.08.2022 passed in Town P.S. Case No. 127 of 2017 by learned CJM, East Chamaparan at Motihari whereby and where under the Learned Magistrate took cognizance of the offences under Sections 406, 420, 467, 468, 504 and 506/34 of I.P.C. against the petitioners and issued summons and transferred the



case to the Court of J.M.1st Class, Motihari is bad in law and as well as in fact.”

The prayer made in the Interlocutory Application No. 01 of 2022 is allowed and the prayer made in the Interlocutory Application is directed to be added in the main writ application.

Heard the parties.

This application has been filed for quashing the F.I.R. bearing Nagar P.S. Case No. 127 of 2017 dated 28.02.2017 registered for the offences under Section 406, 420, 379, 506 and 34 of the Indian Penal Code.

The prosecution story in short is that:- One Neeraj Kumar/ respondent no. 5 gave a written report to the officer-in-charge of Town P.S., Motihari on 28.02.2017 alleging an occurrence of forgery on 07.04.2010. The respondent no. 5 claims that he works at Sadar Hospital, Motihari as contractor for Cleanliness and in course of contract, respondent no. 5 was introduced with petitioners and on 07.04.2010 an agreement was executed between petitioner no. 1 and respondent no. 5 in which on different dates Rs. 20 lakhs has been accepted and in said agreement it has been stated that in carrying out the work at RDC, Motihari re-payment will be made within a period of two years and 25% from income will be given. The informant



further alleges that he has arranged 20 lacks from relatives and paid in cash and through cash & cheque. On 25.02.2017 (Saturday), informant along with witnesses came to RDC, Motihari Sadar Hospital at 12:00 Noon on the request of petitioners to receive amount and found that some antisocial elements with arms are sitting along with the petitioners and when the informant ask for the amount as per the agreement, petitioners got irritated and asks that fraud has been committed by us and threatened the respondent no. 5 and abused him and snatched gold necklace worth Rs. 50,000/-. The informant further claims that the petitioners have committed fraud and forgery and cheated the respondent no. 5.

Learned counsel for the petitioner submits that from reading of the F.I.R., no criminal offence is made out. At the best a civil dispute between the parties is made out for which the informant could have approached the Civil Court for his grievances.

He has also relied upon a judgment of the Hon'ble Supreme Court in the case of *Lalankumar Singh vs State of Maharashtra 2022 SCC OnLine SC 1383*.

He has further submitted that during the pendency of this writ application, chargesheet has been submitted and the



cognizance has been taken which has been challenged by filing an Interlocutory Application No. 1 of 2022.

Learned counsel for the respondent no. 5 has submitted that even if civil dispute between the parties is made out, the criminality can be investigated by the Police and because a civil dispute is made out between the parties, the criminal case cannot be quashed.

Considered the submission of both the parties. I have gone through the documents annexed with the petition as well as F.I.R..

From reading the F.I.R., it appears that respondent no. 5 has tried to give criminal color to a purely civil dispute as preliminary allegations are with regard to non-sharing of the profits pursuant to an unregistered partnership between the parties.

Moreover, in view of the law laid down by the Hon'ble Supreme Court in the case of *Anand Kumar Mohatta vs State(NCT of Delhi) 2019 11 SCC 706*, if the foundation falls the entire superstructure will fall and mere change of stage will not result in the disposal of the writ application.

In view of the law laid down by the Hon'ble Supreme Court in the case of *Bhajan Lal vs State of Haryana 1992 Supp*



(1) SCC 335 and in the case of *Lalankumar Singh vs State of Maharashtra 2022 SCC OnLine SC 1383*, this application is allowed and the F.I.R. bearing Nagar P.S. Case No. 127 of 2017 dated 28.02.2017 is hereby quashed.

(Sandeep Kumar, J)

Shishir/Vikas

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