IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7506 of 2023

Arising Out of PS. Case No.-2529 Year-2020 Thana- PATNA COMPLAINT CASE District- Patna

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RASHMI AGRWAL W/O SUNIL KUMAR AGRAWAL RESIDENT OF- 9/4, 3RD FLOOR, MADHUBAN APARTMENT, PITAMPURA, P.S.- RANI BAGH, NEW DELHI

... ... Petitioner/s

Versus

1. The State of Bihar
2. DILIP KUMAR TIBREWAL @ DILIP KUMAR S/o Late Satya Narayan Prasad R/o- Opp. Chandan Automobiles Workshop, P.S.- Kankarbagh, District- Patna

... ... Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Chittaranjan Sinha, Sr, Adv.
		Mr. Sriram Krishna, Adv.
For the Opposite Party/s	:	Mr. Nawal Kishore Prasad,, APP.
		Mr. Sanjeev Ranjan, Sr. Adv.
		Mr. Prakash Chandra Agrawal, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL ORDER

10 30-08-2023 Heard learned Senior Counsel for the petitioner, learned Senior Counsel for the complainant and learned A.P.P. for the State.

2. The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 403, 409, 419, 420, 467, 468, 477 (A) and 120 (B)/34 of the Indian Penal Code.

3(1). As per the FIR, the prosecution story, in brief, is that, the complainant is the founder of M/s Aqua Fine Agro Industries, which was established in 1989. Later on, in the year

2004, the firm was registered as a company in the name of Indigo Steel Pvt. Ltd. It is further alleged that the complainant being the chief promoter, with his heavy investment and long earned skills, established and promoted the business of the company. As he has less knowledge with regard to paper work, he made his close aide Ramavtar Agarwal and Arun Kumar Agarwal as Director in 1993, and when Arun Kumar Agarwal resigned, Sunil Kumar Agarwal, husband of the petitioner, became Director of the Company. On 1st April, 2012, Ramavtar Agarwal retired and before his retirement, the complainant was inducted as Director of the company and formulated the resolution in this regard. Prior to, Ramavtar Agarwal's resignation, on the same day, the complainant became Additional Director of the company by signing a consent letter in this regard and handed over to Sunil Kumar Agarwal, husband of the petitioner, for filing the said discussion of board meeting of the company before the ROC, but he did not submit the said board resolution to the ROC.

3(2). It is further alleged that 89,100 Nos. @ Rs. 10 per share were also transferred by Ramavtar Agarwal in the name of the complainant by signing and executing a transferred Deed of shares, but accused Sunil Kumar Agarwal did not file return to ROC rather he got the shares transferred in the name of the petitioner, who is wife of the Sunil Kumar Agarwal. Petitioner and his husband filed Director Appointment Form 12 in the name of Ramavtar Agrawal who died on 25.12.2012. The balance sheet of 2013-14 shows the signature of Ramavtar Agarwal even though he died in 2012. Further, accused Sunil Kumar Agarwal got 55000 shares of Shakuntla Devi Agarwal transferred in his wife's name and has filed fake resignation letter of Ramavtar Agrawal in 2014.

3(3). The accused persons are said to have misappropriated an amount of Rs. 87,60,000/- and sold all the stocks, fixed assets and grabbed an amount of Rs. One Crore. The balance sheet of the company shows Nil.

4. Learned Senior counsel for the petitioner submits that petitioner is quite innocent and has committed no offence. No such occurrence as alleged ever took place. He has been falsely implicated in this case due to ulterior motive. The allegation levelled against the petitioner is totally false and based on concocted facts. It is further submitted that as the complainant alleged that he was the founder of the company and through his own efforts and hard work, he had acquired the business and started a steel trading processing unit in name of

M/s Aqua Fine Agro Industries, then he must have sales tax Registration/ Factory Registration/ Labour Registration. Complainant has no proof regarding ownership/partnership deed in this Company from 1989 to 31.12.1993. If the complainant is chief promoter and he has done heavy investment in company, he must have done payments transaction through Cheque/DD, but complainant has not filed such documents. The present case is a counter-blast of Complaint Case No. 1937 of 2020 in which Anil Kumar Agarwal, who is own brother of accused Sunil Kumar Agarwal. Accused Sunil Kumar Agarwal has not got this petitioner appointed as Director of the Company by using his own digital signature and misusing his power as a Chairman. The complainant has lodged the present complaint after lapse of several years, which creates doubt about the prosecution case. Petitioner has no criminal antecedent as mentioned in para-3 of this application. He further submits there is no specific overt act against the petitioner. The petitioner is only made accused in the present case because she is the wife of the accused, Sunil Kumar Agrawal.

5. Learned Senior Counsel for the petitioner further submits that petitioner is a female and home maker and

has never been involved in the family business. In fact, since the year 2004 itself, the petitioner along with her husband and her children has been living in Delhi on account of her husband's ill health and for providing proper education to her children. He further submits that Shri Anil Agrawal (who has set up the present complaint against the petitioner and is also the eldest brother of the petitioner's husband) had complete and absolute control of the joint family businesses and everything and all documents were signed by Shri Anil Agrawal. He further submits that, in fact, it is Shri Anil Agrawal who actually signed the documents and relevant papers in the name and style of 'S.K. Agrawal', i.e. petitioner's husband and a co-accused. He further submits that the report of the hand writing expert which is annexed as Annexure-4 series to the bail application clearly shows that the signatures in the name and style of 'S.K. Agrawal' on all the relevant documents pertaining to joint family business matches the handwriting of Shri Anil Kumar Agrawal and not that of the petitioner's husband. He further submits that Shri Anil Agrawal has also forged and fabricated the signatures of the petitioner as well. He further submits that the report dated 28.02.2023, 01.03.2023 and 04.03.2023, clearly shows that Shri Anil Agrawal has signed the company documents in place of the petitioner, her husband and Shri Ramavtar Agrawal (petitioner's father-in-law) as the signatory on their behalf of the documents matches that of Shri Anil Kumar Agrawal.

6. Learned Senior Counsel for the petitioner further submits that the complainant was aggrieved by the actions of the petitioner or her husband, or her son, all three of whom have been made accused in the Complaint Case. The complainant should have moved the appropriate forum i.e. NCLT rather filing the Complaint Case No. 2529(C)/2020 and giving a criminal angle to a purely civil dispute between the parties. He further submits that both the Companies Act, 1956 and the Companies Act, 2013 are a self-contained code and provide for adequate punishment/penalties to be imposed in case of contravention of any of its provisions. The complainant has filed the Complaint Case only to harass and put pressure on the petitioner and her husband. He further submits that Shri Anil Kumar Agrawal has set up the complainant to steer clear from any allegation that the dispute is in essence between two brothers. Therefore, a third party with a questionable identity and one who is an employee of Shri Anil Kumar Agrawal has been set up as the complainant in Complaint Case No.

2529(C)/2020.

7. Learned Senior Counsel for the petitioner further submits that Dilip Kumar Tibrewal, the complainant in Complaint Case No. 2529(C)/2020 has been associated with Anil Kumar Agrawal since the past 15 years and is currently deputed at Shri Anil Kumar Agrawal's Tanishq Showroom at Muzaffarpur. Dilip Kumar Tibrewal is also a shareholder with 19.56% stake in Exclusive Stores Pvt. Ltd. in which Shri Anil Kumar Agrawal's son namely Saksham Agrawal is a Director. Dilip Kumar Tibrewal's two sons are working at Shri Anil Kumar Agrawal's Tanishq Showroom at Patna. He further submits that Shri Anil Kumar Agrawal and Shri Arun Agrawal are first Directors of M/S. Indigo Steels Pvt. Ltd and Sunil Kumar Agrawal's name is not mentioned as Director. There is no record with the ROC regarding as to when the petitioner's husband was made Director.

8. Learned Senior Counsel for the petitioner further submits that the identity of Dilip Kumar Tibrewal is questionable because at some places the said Dilip Kumar Tibrewal has given his father's name as Satyanarayan Prasad, while at certain places, a different identity is given. For example, in the complaint petition, the name of the

complainant is Dilip Kumar Tibrewal and father's name is mentioned as Satyanarayan Prasad. In the Annual Return (Annexure 2 to the bail application) and Mgt-1 of M/S. Indigo Steels Pvt. Ltd., it is mentioned as Dilp Kumar and father P. Kumar. He further submits that all the addresses given by the complainant are actually joint family properties of the Agrawal family where a partition dispute is going on between the petitioner's husband and Shri Anil Kumar Agrawal. He lastly submits that the partition case is registered as 311/2019 with filing number 1947/2019. The said partition suit is still pending. In short, all the properties mentioned are actually family properties of the Agrawal group. He further submits that the residential address given by the petitioner in the complaint petition viz., Opposite Chandan Automobiles, Kankarbagh, Patna is actually a property registered in the name of Saksham Agrawal, i.e., son of Shri Anil Kumar Agrawal. He further submits that the complainant has actually been set up by Shri Anil Kumar Agrawal to exert pressure on the petitioner and her husband to withdraw all cases filed against him. The main aim of Shri Anil Kumar Agrawal is to divest everyone from the joint family business and properties and usurp everything alone as he is the one who had been handling everything and was in control of all the businesses.

9. Learned APP for the State as well as learned counsel for the complainant oppose the prayer for bail and submit that under conspiracy, all the accused persons committed fraud and executed their plan of defrauding the complainant by misusing and abusing the power of accused Sunil Kumar Agarwal as Director/Chairman/Authorised Signatory with spiteful and malicious intention towards the company and the complainant. They grabbed the entire funds and assets, furniture and fixtures of the company by taking the advantage of low literacy of the complainant.

10. Learned counsel for the complainant further submits that the petitioner has again given false statement in her application that no money has been transferred to her, whereas it is very much clear from the statement of the bank account that Rs.32,50,000/- has been transferred to the bank account of M/s World Time, New Delhi and petitioner is operating/managing the said firm. He further submits that complainant has started its business in the year 1989 in the name and style of M/s Aqua Fine Agro Industries along with the father in law of the petitioner. In 1993, the said firm was registered as a company with the registrar of the companies as Aqua Fine Agro Industries

Pvt. Ltd in which Ramavtar Agrawal (father in law) and his son Arun Kumar Agrawal were also joined as director. In 1996, Arun Kumar Agrawal resigned from the company and the husband of the petitioner joined as a director of the company. In the year 2004, the name of the company in question has been changed as M/s Indigo Steels Pvt. Ltd. and father in law of the petitioner namely Ramavtar Agrawal and husband of the petitioner Sunil Kumar Agrawal were also a share holder in the company. In the year 2012, Ramavtar Agrawal resigned from the company due to his ill health and transferred his 89100 Nos. Shares to the complainant and appointed complainant as director by passing resolution on 02.04.2012 in the board meeting of the company. He further submits that all the document were handed over to the husband of the petitioner to submit it in the office of Registrar of the Companies but the husband did not submitted the document with the office of the registrar of the companies with malafide intention.

11. Learned counsel for the complainant further submits that having ulterior motive and intention to cheat the complainant, petitioner conspired with her husband and transferred the shares in her name and became the director in the company which was the property of the complainant as the

major shares was transferred by the father in law of the petitioner in the name of the complainant. He further submits that the father-in-law of the petitioner died on 25.12.2012, but the husband of the petitioner filed its resignation on 30.09.2014 by making his false signature after his death and transferred his share in the name of petitioner with the consent of the petitioner.

12. Learned counsel for the complainant lastly submits that the petitioner is directly involved in the entire episode of fraud and conspired with her husband by transferring the company shares belongings to the complainant in her own name and declared her director in the company and huge funds of the company by transferring the same to the account of her another firm situated in Delhi. The husband of the petitioner also did not file the necessary documents which he ought to have filed in the office of the Registrar of Companies in due time which was signed by the former director Ramavatar Agrawal clearly shows that the entire fraud was played by the petitioner and her husband with a view to grab the entire assets of the company after the death of Mr. Ramavtar Agrawal.

13. Having regard to the facts and circumstances of the case as well as the argument of the parties, it is clear that the complainant had not moved before the appropriate forum i.e.

NCLT rather filed the present case against the petitioner and also the fact that the identity of complainant is itself doudtful as he has given his father's name as Satyanarayan Prasad in the present Complaint Case and in the Annual Return and Mgt-1 of M/S. Indigo Steels Pvt. Ltd., his father’s name is mentioned as P. Kumar and there is no specific overt act against the petitioner in this case, let the above named petitioner, be released on bail, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Court below where the case is pending/successor Court in connection with Complaint Case No. 2529(C) of 2020, subject to the condition as laid down under Section 438 (2) of the Cr.P.C.

(Anjani Kumar Sharan, J)

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