IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35499 of 2021

Arising Out of PS. Case No.-381 Year-2019 Thana- PATNA COMPLAINT CASE District-Patna

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PRAVEEN MISHRA Son of Sri B. Mishra earlier posted as DGM- Retail, Patna Regional office, Situated at 6th floor, Lok Nayak Jai Prakash Bhawan, P.S. - Kotwali, Town and District - Patna, 800001, presently resident of 8th floor, Scope Minar, Laxmi Nagar, Delhi-110092

... ... Petitioner/s

Versus

1. THE STATE OF BIHAR
3. SANJAY KUMAR GUPTA Son of Late Jagdish Prasad Pua Gali, P.S.-Chawk, Patna City-800008

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Rajeev Prakash
For the Opposite Party/s : Mr. Ajit Kumar

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 07-04-2023 Heard learned counsel for the parties.

This application is filed for quashing of the order dated 07.02.2020 by which learned A.C.J.M.-13 has taken cognizance against the petitioner passed in Complaint Case No. 381(c) of 2019.

As per prosecution case, one complaint was filed against 34 persons including the petitioner by the complainant.

The complainant was given an assurance by his relative (accused no. 4) that he will arrange a Petrol Pump dealership for him with the help of HPCL's higher officials, which includes Praveen Kumar Mishra, the head of East Zone of HPCL. It is further stated that complainant had deposited Rs. 4,16,000/- (Rs. Four Lakhs and Sixteen Thousand) in one Drive Track Plus Account, bearing DT Plus Account No. 1800012992 through RTGS from his SBI Account No. 11338789465. It is further stated that no allotment of petrol pump was done in his favour. After inquiring on the said issue from accused no.4, he asked complainant to forget the petrol pump, abused him and threatened him with dire consequences of killing the complainant family by claiming that he have very good relations with criminals and Patna Police. It is further stated that when complainant requested the Board of Directors of HPCL to return the said amount which has not been returned. However, he informed that vide letter issued by HPCL Company informing the complainant that one Bhoor Singh Marvadi had used the money, when complainant called on the mobile of said person then again he was threatened by said Pawan Agrawal to forget the amount. The complainant alleged that he had sent so many complaints to Mumbai Police but no action was taken by Mumbai Police against HPCL and its Board of Director for return of money. It is further stated that complainant also made several complaints to Governor of Reserve Bank of India, but no action was taken. He also alleged that he made several complaints for lodging FIR to Patna police, but no FIR was lodged. Hence, it is alleged that all the accused persons with some dishonest intention cheated the complainant under criminal conspiracy with each have taken gain wrongful loss to the complainant. Hence this complaint petition was filed.

It has been submitted by learned counsel for the petitioner that the petitioner was the Area Manager of HPCL at the relevant time and there is no allegation in the complaint that the petitioner was given any money or that the petitioner has assured the complainant of allotment of any Petrol Pump. The only allegation against the petitioner is that he did not provide the information after the amount was transferred to one bank account by the complainant. It is also submitted that the complainant had filed the complaint against 32 persons which includes the Board of Director, ICICI Bank, Governor of Reserve Bank, Mukesh Ambani, Regional Directors of RBI, Patna and Mumbai, Auditors of ICICI Bank and SBI Bank, Registrar of Company and many other responsible persons and cognizance has been taken against the petitioner and others without any application of mind.

Learned counsel for the petitioner has relied upon a judgment of Hon’ble Supreme Court in the case of ***Pepsi Food Ltd. Special Judicial Magistrate and others (1998) 5, SCC 749.***

> Paragraph 28 and 29 of the aforesaid judgment reads as follows:- ***“28.****Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.*
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> ***29.****No doubt the magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. it was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants, If, however, we refer to the impugned judgment of the High Court it has come to the conclusion, though without referring to any material on record, that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused." We do not think that the High Court was correct in coming to*

such a conclusion and in coming to that it has also foreclosed the matter for the magistrate as well, as the magistrate will not give any different conclusion on an application filed under section 245 of the code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants. if we now refer to the facts of the case before us it is clear to us that not only that allegation against the appellants make out any case for an offence under Section 7 of the Act and also that there is no basis for the complainant to make such allegation. The allegations in the complaint merely show that the appellants have given their brand name to "Residency Foods and Beverages Ltd." for bottling the beverage "Lehar Pepsi". The complaint does not shoe what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturer of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information is from A.K. Jain who is impleaded as accused No.3. The preliminary evidence on which the 1st respondent relied in issuing summon to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955 made the Fruit Products Order, 1955 (for short, the "Fruit Order"), It is not disputed that the beverage in the question is a "fruit product" within the meaning of clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The fruit Order defines the manufacturer and also sets out as to what the manufacturer is required to do in regard to the packaging, making and labeling of containers of fruit products. One of such requirement is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacture to be displayed on the top or neck of the bottle. The licence number of manufacturer shall also be exhibited prominently on the side label on such bottle [clause (8)(1)(b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of the Order and to the penalty to which the manufacturer would be exposed under the provisions of the Essential

> *Commodities Act, 1955. We may, however, note that in The Hamdard Dawakhana (WAKF) Delhi & Anr. vs. The Union of India & Ors. [AIR 1965 SC 1167 = (1965) 2 SCR 192], an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954. This Court negatived this plea and said that the Fruit Order was validly issued under the Essential Commodities Act. What we find in the present case is that there was nothing on record to show if the appellants held the licence for the manufacture of the offending beverage and if, as noted above, the first appellant was the manufacturer thereof."*

Learned counsel for the complainant very fairly submitted that there is no criminal allegation against the petitioner.

I have considered the submissions of learned counsel for the parties which seems that the complainant was not satisfied with the answer given by the petitioner and therefore made the petitioner also accused in this case. The petitioner is responsible officer of the rank of Deputy General Manager in the HPCL and he cannot be made to suffer only because a frivolous complaint is filed against him without any allegation.

Considering the law laid down by the Hon'ble Supreme Court in the case of ***Pepsi Food Ltd. Vs. Special Judicial Magistrate and others*** (***supra***) and considering the fact that no offence is made out from reading the entire complaint against the petitioner, this application is allowed.

From reading of the complaint, the Complaint Case

No. 381(c) of 2019, is hereby quashed so far as the petitioner is concerned.

(Sandeep Kumar, J)

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