

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8689 of 2008

NUPUR SHRIVASTAVA, wife of Ajit Kumar Sinha, Proprietor of Sadhbhavana H.P. Gas Agency Phulia Tola, Janipur Road Phulwarisharif, Patna resident of C/O Shashi Bhushan Navin, Smrti Apartment, D.V.C. Colony P.S. Jakkanpur, District-Patna.

... .. Petitioner/s

Versus

STATE OF BIHAR

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 9107 of 2008

RAKESH ROSHAN S/o Sri Vijayeshwar Prasad, Proprietor of M/S Om Sai Indane Seva, Mangal Market, Bari Path, Patna

... .. Petitioner/s

Versus

STATE OF BIHAR and ANR

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 11753 of 2008

ARUN KUMAR SRIVASTAVA Son of late Bachu Prasad, Resident of 205, Raj Apartment, Ashiana Road, Patna, District-Patna.

... .. Petitioner/s

Versus

STATE OF BIHAR

... .. Opposite Party/s

Appearance :
(In CRIMINAL MISCELLANEOUS No. 8689 of 2008)
For the Petitioner/s : Mr.Sunil Kumar Verma, Adv.
For the Opposite Party/s : Mr.Jitendra Kumar Singh, APP
(In CRIMINAL MISCELLANEOUS No. 9107 of 2008)
For the Petitioner/s : Mr.Upendra Prasad, Adv.
For the Opposite Party/s : Mr.S.C.Mishra, APP
(In CRIMINAL MISCELLANEOUS No. 11753 of 2008)
For the Petitioner/s : Mr.Ashwani Kumar Sinha, Adv.
For the Opposite Party/s : Mr.A.Sharma, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER



the petitioners and Mr. Jitendra Kumar Singh, learned APP for the State.

The present petition has been preferred by the petitioners under Section 482 of the Cr.P.C. for quashing of the entire proceeding dated 21.2.2007 by the learned Court of Judicial Magistrate, First Class, Patna, in Complaint Case No. 3288 of 2006 for the offences punishable under Sections 406, 420 and 120B of the Indian Penal Code by which the learned Court took cognizance against the petitioners herein.

As per the complainant, the lady as also the other accused persons approached him with the statement that the petitioner, Nupur Srivastava has been allotted a Gas Agency by the HPCL under Individual Woman Category and the accused persons need financial support to open and run the said Gas Agency. Accordingly, they took amount to the tune of Rs. 20 lakh through different modes and also executed an agreement to this effect and subsequently, the Gas Agency was opened in the name of the daughter of the complainant as Sadbhawna Gas Agency.

Subsequently, the allegation is that the HPCL officials visited the said showroom and upon knowledge about an agreement made between them in violation of the licence granted to her warned the licence holder. The allegation is thereafter, the



complainant was thrown out of the showroom, new locks was put in the showroom and in this way, he suffered financial loss to the tune of Rs. 20 lakh. The further complain is that despite knowing that HPCL does not warrant any such agreement in its licence, the accused persons with dishonest intention concealed the said fact and purposefully induced the complainant in making investment in their business and once their purpose was served, he was ousted.

The learned Court took up the matter and as stated above, cognizance was taken on 21.2.2007 prompting the accused persons to move before this Court under Section 482 of the Cr.P.C.

Learned counsel for the petitioners submit that this complaint was filed after the accused persons lodged FIR against the Manager of the Gas Agency. Further, in view of the agreement, the petitioner ought to have moved before the Arbitrator for the redressal of his grievance and lastly with the help of Hon'ble Apex Court decision in **Hira Lal Hari Lal Bhagwati Versus CBI, New Delhi, reported in (2003) 5 SCC 257** with a specific stress on para-34 (wherein Section 415 of the Indian Penal Code has been dealt with where it has been specified that the inducement must be fraudulent or dishonest) claimed that



there was no dishonest intention.

The second order of the Hon'ble Apex Court on which the petitioner has relied is **Indian Oil Corporation Versus NEPC India Limited and Others reported in (2006) 6 SCC 736** with stress on para-13 and 14 which read as follows :

"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 breakdown 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 through criminal prosecution should



be deprecated and discouraged. In G. Sagar Suri v. State of UP this Court observed: (SCC p. 643, para 8)

"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."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the



criminal proceedings are unwarranted and his remedy lies only in civil law, legal should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

Per contra, learned APP on the other hand submits that a perusal of the complaint would show that the petitioners having allotted the licence for HPCL Gas Agency were fully aware with its terms and conditions inasmuch as, they were barred from entering into any agreement with any party as the licence was allotted in the name of the Individual Woman Category fraudulently induced the complainant and in the process, allegation is that Rs. 20 lakh was invested in the Firm. Further, when the HPCL official visited the shop, in the garb of said visit, the allegation is that the complainant was thrown out of the



showroom, new locks put there and all the documents seized and as such, the criminal intent of the accused persons cannot be ignored.

Having gone through the facts and circumstances of the case as also the submissions put forward by the respective parties, this Court is of the firm view that the content in the complaint prima facie makes out a case against the accused persons. The Court further finds force in the submissions put forward by the learned APP that when the terms and conditions in the licence granted by the HPCL to the accused persons were known to them, they were duty bound to follow it up in true letter and spirit. However, they fraudulently and dishonestly induced the complainant to make financial investment in the Gas Agency and subsequently, as per the allegation threw him out, certainly it was inducement with fraudulent purposes.

This Court has gone through the order of the Hon'ble Apex Court cited by the learned counsel for the petitioners in which two categories were incorporated. In the considered opinion of this Court, the accused persons/petitioners herein come in the first category and the matter comes within the first class of cases where the inducement was fraudulent and the intention was dishonest. Thus, the cases cited above does not come to the rescue



of the petitioners.

Before parting, this Court would like to take note of the fact that on 18.3.2010, a coordinate bench of this Court had stayed the further proceedings in Cr. Misc. No. 8689 of 2008 (Nupur Srivastava Versus State of Bihar). However, another coordinate bench of this Court on 28.28.7.2010 had vacated the said interim order dated 18.3.2010.

Still, after passage of 13 years, it has been informed by the learned counsel for the petitioner that Nupur Srivastava has informed that the case is still pending.

The learned Sessions Judge, Patna should take note of the fact that how despite there being no interim protection to Nupur Srivastava, the case could not come to logical conclusion.

With the aforesaid averment, this Court holds that there is no merit in the petitions put forward by the accused persons/petitioners herein and the same are accordingly dismissed.

(Rajiv Roy, J)

Ajay Singh/-

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