

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30502 of 2023

Arising Out of PS. Case No.-177 Year-2022 Thana- KHAJEKALA District- Patna

UDAY PRAKASH SINGH Son of Shyam Babu Singh Resident of Village -
Dighi Kalan, P.S.- Hajipur Sadar, District - Vaishali

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Sanjeev Ranjan, Adv. Mr. Mrityunjay Kumar, Adv.
For the Opposite Party/s :	Mr. Bharat Bhushan, APP. Mr. S.D. Sanjay, Sr. Adv. Mr. Mohit Agrawal, Adv. Mr. Lokesh Kumar, Adv. Mr. Rahul Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

5 27-09-2023 Heard learned counsel for the petitioner, learned senior
counsel for the informant and learned APP for the State.

2. The petitioner apprehends his arrest in a case registered
for the offences punishable under Sections 420, 406, 409, 385,
387, 504, 506, 34 of the Indian Penal Code.

3(a). Allegation against the petitioner in the First
Information Report is that the informant owes a factory in the
name and style of Hemraz Feeds India Pvt. Ltd. situated at
Fatuha Industrial Area and he is the Managing Director of the
said factory. The informant manufactures cattle feeds in the said
factory. It is further alleged that the petitioner used to regularly
purchase cattle feed for the last 4 to 5 years from the informant



and used to make regular payment, but for the last 2 to 3 years, he did not make the payment for the cattle feed and the total outstanding as of now is Rs. 75,50,514 for which the informant has got documentary evidence in proof.

3(b). It is further alleged that on 16.06.2022 at about 4 P.M., the petitioner along with four unknown persons came to the office of the informant, which is situated in his residence itself and winked his eyes towards the four unknown persons. Thereafter, the informant asked the petitioner as to whether he has brought the amount due to him, on which the petitioner abused the informant and asked him to forget about the money and instead arrange Rs. 1 Crore or to face dire consequences. On this, the informant told that he has no money to pay a huge amount of Rs. 1 Crore and requested the petitioner to pay his outstanding dues. Thereafter, the petitioner asked the unknown persons to catch hold the informant and take him with them and pointed his pistol at the informant due to which the informant and his staff got afraid.

3(c). It is further alleged that petitioner is said to have tried to disgorge the money of the informant fraudulently.

4. Learned counsel for the petitioner submits that no offence under Sections 420 and 406 and other allied sections of



the Indian Penal Code is made out against the petitioner. From bare perusal of the First Information Report, as the allegation against the petitioner is related to commercial dispute arising out of business transaction and mere breach of contract cannot give rise to criminal prosecution for cheating. It is further submitted that the informant himself has stated in the FIR that the business transaction between the parties were continuing for the last 4 to 5 years and as per the allegation, the petitioner defaulted in repayment of dues for the last 2 to 3 years, whereas the payment in the earlier years was regular. Therefore, it can safely be held that there was no fraudulent or dishonest intention at the time of making the promise or at the beginning of the transaction to constitute the offence under Section 420 of IPC. It is further submitted that to constitute the offence under Section 406 of the Indian Penal Code, there must be allegation of misappropriation done in dishonest manner, which is conspicuously absent in the FIR.

5. Learned counsel for the petitioner further submits that from Para 15 of the case diary, it is evident that the informant had supplied the details of accounting which itself shows regular payment till 2019, but on account of complete lock down, announced from third week of March, 2020, the business



of the petitioner came to a grinding halt and all the supply of cattle feed which was made by the informant in the accounting also shows massive supply in March 2020, which the petitioner was reluctant to accept on account of total closure of business and therefore, the dispute of payment pertains to the period protected by force majeure and therefore, the acknowledgment of amount due and payable in the balance sheet, i.e, Rs. 75 lacs (approx) which had been brought on record by the informant to establish that there is an admitted due, is a disputed question of fact which has to be examined in a duly constituted civil proceeding as the petitioner on 20.04.2020 had sent a legal notice to the informant stating that the petitioner was not ready to accept the consignment of cattle feed for the period after February, 2020, but on the insistence of the informant that he had no godown to keep the goods as there is no supplier available to purchase the manufactured cattle feed, the petitioner has stocked the cattle feed, which has no longer than a three month storage value and the payment for supply of such goods shown in the balance sheet of 2020-21 is disputed as they were made in discharge of statutory duty.

6. It is further submitted that no offence under Section 387 of the Indian Penal Code is made out against the petitioner



as the informant in his subsequent statement has never attributed that the petitioner arrived armed with pistol at the house of informant or had pointed the pistol while demanding extortion and further it is improbable and absurd that the person, who is liable to pay dues to his manufacturer would have the audacity to make demand of *rangdari* from the informant, who is a rich and powerful person and thus, the allegation against the petitioner seems to be preposterous and is a super-addition. There is purely civil dispute between the parties having no criminal outfit. Petitioner has one criminal antecedent.

7. It is lastly submitted by learned counsel for the petitioner relying upon the judgment of Supreme Court in ***Bimala Tiwari Vs. State of Bihar in SLP (CRL) No. 834-835 of 2023*** to buttress his submission that the process of criminal law cannot be used for arm twisting and money recovery as the recovery of money is essentially within the realm of civil proceeding and further highlighted the disquieting trend emerging as noticed by the Hon'ble Apex Court in ***Ramesh Kumar Vs. The State of NCT of Delhi*** reported in ***SLP (CRL) No. 2358 of 2023*** that judicial proceeding initiated by persons, accused of cheating to obtain orders under Section 438 Cr.P.C. are unwittingly being transformed into process for recovery of



money at the instance of informant and on the insistence of the counsel of the informant that the anticipatory bail of the petitioner be considered only on his undertaking to pay the amount in question as he was earlier granted anticipatory bail in another case of cheating on deposit of the amount is dehors the provision of Section 438 of Cr.P.C.

8. Learned Senior Counsel for the Informant Shri S.D. Sanjay opposing the prayer for bail submits that the petitioner had cheated the informant of a huge amount of Rs. 75.60 lacs by winning the confidence of the informant by making regular payment for the first 2 years and subsequently, thereafter, the petitioner continued to receive consignment of cattle feed without making payment as a result of which a huge amount became due to the informant which clearly shows the dishonest and fraudulent intention of the petitioner to deceive the informant and to cause wrongful loss to the informant and thus constitute the offence under Section 420 of IPC.

9. It is further submitted by learned Senior Counsel for the informant that the petitioner in his audited balance sheet for the period 2019-20, 2020-21 has shown the liability of debt payable to the informant and his auditor has reported that from the books of the petitioner's company, there was an entry of



Sundry creditor for a sum of Rs. 76,33,949/- as on 31.03.2020 and a sum of Rs. 75,50,514/- as on 31.03.2021 in the name of the informant's company i.e. M/s Hemraj Feeds India Private Limited as such, the entry in balance sheet, duly signed by his chartered accountant, can be relied upon to evidence acknowledgment of debt and the admission does not cease to be acknowledgment of liability as contended by the counsel for the petitioner on the ground that they were made in discharge of statutory duty. It was further submitted that the petitioner being a distributor, was an agent who had committed breach of trust by misappropriating the money of the informant and as such, the entrustment of goods and failure to make payment thereof, does constitute the offence under Section 406 of IPC. He further submits that the petitioner is accused in another case of similar nature of cheating and was granted anticipatory bail on deposit of amount so cheated and therefore, similar condition may be imposed by directing him to deposit by taking his undertaking.

10. A counter affidavit has been filed on behalf of the informant. In para 5 of the counter affidavit, it is stated that there had some business transaction between the petitioner and informant as the informant has a factory of poultry feed in the name and style of M/s Hemraj Feeds Pvt. Ltd. situated at Fatuha



from where the petitioner used to purchase poultry feed. The petitioner misled the informant and obtained goods by falsely promising to pay for the same to the tune of Rs. 76,33,949/- as on 31.03.2020, which became Rs. 75,50,514/- as on 31.03.2021, but when the informant demanded for the payment of Rs. 75,50,514/- from the informant demand for the payment of Rs. 75,50,514/- from the petitioner on different dates including 16.06.2022, then instead of paying the same, the informant threatened the petitioner with dire consequences on the gun point and asked the informant to pay ransom of Rs. 1 Crore and on the basis of the aforesaid facts, Khajekalan P.S. Case No. 177 of 2022 was lodged by the informant against the petitioner. It is further submitted that the falsity of the petitioner can be corroborated from the fact that the petitioner in his anticipatory bail application before the learned District & Sessions Judge, Patna on affidavit has stated that a sum of Rs. 5 lakhs is due and he is ready to pay to the informant which is also mentioned in the order of learned District & sessions Judge, Patna but before this Hon'ble Court, he has again made false statement on affidavit that some amount is due to paid to the informant which he is ready to pay to the informant. However, he has also stated that there is dispute of accounting with the petitioner. The



petitioner is habituated of making such false and self-contradictory statements before the learned District & Sessions judge and also before this Hon'ble Court.

11. Heard the argument of the parties at length and perused the materials on record. It is manifest from the bare reading of the First Information Report that there is no reference to the practice of any deception or dishonest intention on the part of the petitioner, which is conspicuously absent and except that they defaulted subsequently to make payment against the supply the cattle feed during Covid-19 and thus, the ingredients of offence of cheating are absent. There is no allegation in the FIR of false representation with dishonest intention which induced the informant to supply goods to constitute the offence of cheating. The dispute between the parties is essentially a civil dispute resulting from a breach of contract on the part of the accused in not making payment against supply of cattle feed by the informant and non-repayment of the price of goods does not constitute offence under Section 420 or 406 of the IPC as held by the **Hon'ble Apex court in Vir Prakash Sharma Vs. Anil Kumar Agrawal** reported in **2007 (7) SCC 373** that non-payment or under payment of the price of goods by itself does not constitute offence under Section 420 or 406 of the IPC.



12. Considering this fact that the nature of dispute being primarily of civil nature, 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) each with two sureties of the like amount each to the satisfaction of the learned lower Court where the case is pending/successor Court in connection with Khajekalan P.S. Case No. 177 of 2022, subject to the condition as laid down under Section 438 (2) of the Cr.P.C.

13. Petitioner is directed to co-operate in the trial.

(Anjani Kumar Sharan, J)

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