

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45092 of 2017

Arising Out of PS. Case No.-145 Year-2015 Thana- BUDDHACOLONY District- Patna

1. Sushil Gupta, son of Late Chet Ram Gupta Resident of G - 74, South City, Gurgaon – 121001, Haryana.
2. Sandeep Gupta son of Subhash Gupta Resident of House No. 1476, P.S. Sector 12, Faridabad, Haryana.
3. Manish Rustagi @ Manish Rastogi son of Pradeep Kumar Resident of 25/18, Shastri Nagar, P.S. Roopnagar, Delhi.
4. Lovesh Kansal @ Lokesh Kansal son of Brij Kishore Kansal Resident of House No. 168, Sector - 17, Faridabad, P.S. Central, Faridabad Haryana.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mr. Firoz Akhtar, Managing Partner, Febcon Project and Co. in front of Meera Inter College, Gauribi

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Amarendra Nath Verma, Advocate
For the Opposite Party/s : Mr. Bharat Bhushan, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 13-10-2023

Heard learned counsel for the petitioners;
learned A.P.P for the State along with learned counsel for
the Opposite Party No.2.

2. The learned counsel for the petitioners
submits that the present quashing application has been
filed for setting aside the order dated 04.07.2016, passed
by learned Judicial Magistrate 1st Class, Patna, in
connection with Budha Colony P.S. Case No. 145 of



2015, Tr. No. 1357 of 2015, whereby cognizance of offences has been taken under Sections 406, 420 and 34 of the Indian Penal Code. The learned counsel next submits that the O.P. No.2 herein had instituted an F.I.R. being Budha Colony P.S. Case No. 145 of 2015, the said F.I.R. came to be instituted, based on the direction of the then S.S.P., Patna, on an application submitted by the O.P. No.2, herein, it is next submitted that the application submitted by the O.P. No., before the then S.S.P., Patna does not even remotely suggests that the concerned P.S. was not willing to take his F.I.R., which gives an impression that the O.P. No.2 intended to get an F.I.R. instituted at the behest of the then S.S.P., Patna, so that the concerned S.H.O. of the P.S. is under pressure to help the O.P. No.2 in getting his fanciful demand cleared.

3. It is next submitted that the allegation in the F.I.R. is that the informant i.e. O.P. No.2 was cheated by a Company, named, Richa Industries Ltd, the petitioners are the Chief Managing Director, Joint Managing Director and Executive Officer of the company, it is next alleged



that the company finalized a sub-contract with the informant's company for the construction of warehouse godowns at the Katihar for Bihar State Warehouse Corporation, Patna worth Rs. 10 crores and the informant in pursuance of the said sub-contract allotted, started working in April, 2015 investing crores of rupees, thereafter he raised bills of Rs. 62 lacs and 46 lacs but the petitioners failed to release payment even when they received an amount of Rs. 72 lacs from the principal i.e. Bihar State Warehouse Corporation (hereinafter referred as 'Corporation') on 19.06.2015, it is next alleged that the informant wrote to the Bihar State Warehouse Corporation in this regard but no action was taken, since the holy month of *Ramzan* was going on, but still the petitioners' company did not release the payment to the informant, when labourers were dying for want of food and medicine, it is next alleged that the main contractor Richa Industries Ltd. is determined not to pay to the informant's company its legitimate due, and is also extending threats to life through its musclemen.



4. The learned counsel thus submits that from bare perusal of the allegation as alleged in the F.I.R., it would manifest that the dispute was purely civil to which a criminal colour was given, it is next submitted that what is not in dispute rather stands admitted is that the O.P. No.2, in the F.I.R. alleges that an agreement was entered in between the petitioners and the O.P. No.2, in lieu whereof the sub contract was granted to the O.P. No.2 for constructing warehouse at Katihar.

5. The learned counsel next submits that company is a juristic person and it can sue and it can be sued, but the company has not been made an accused in the present F.I.R, as such, in absence of the company being made an accused, the prosecution against the petitioners cannot proceed. It is further submitted that company is incorporated under the Company Act, 1956.

6. The learned counsel further submits that the petitioners' company was awarded a tender floated by Bihar State Warehousing Corporation for construction of godowns at many places in Bihar and a sub-contract



was granted to the informant form by the petitioners' company vide letter of award dated 18.02.2013 for constructing godown at Katihar within seven months, further Clause-8 of the said award clearly stipulated that the payment against the bill raised by the sub-contractor submitted along with approved signed and stamped copy of Bihar State Warehousing Corporation shall be paid within 15 days, further any delay in payment shall not entail any kind of liabilities, it is thus submitted that Opposite Party No.2 having accepted terms and conditions of the agreement now cannot approbate and reprobate at the same time. It is next submitted that informant in the F.I.R. alleges that the petitioners' company received a payment of Rs. 72 lacs from the Corporation on 19.06.2015, but without waiting for the 15 days period as per contract the F.I.R. came to be instituted on 25.06.2015 itself i.e. within a period of 7 days which itself was in breach of the agreement. The learned counsel further submits that the main agreement was entered between the petitioners' company and the Corporation for



constructing godowns in various districts of the State of Bihar, it is next submitted that the agreement entered in between the petitioners' company and the Corporation had an arbitration clause and the sub-contract which was allotted to the informant's company by the petitioners' company was based on the main agreement which was entered in between the petitioners' company and the Corporation, as such, the arbitration clause was applicable to the agreement entered in between petitioners and the O.P. No.2, it is thus submitted that if the O.P. No.2 was aggrieved by the action of the company he could have invoked the arbitration clause or would have filed a money suit or could have approached the authorities competent but filing a criminal case with a view to coerce the petitioners into submission for parting with the money cannot be countenanced.

7. It is further submitted that after the F.I.R. was instituted the petitioners were coerced into submission to arrive at a settlement and thus they had to sit with the informant for resolving the dispute under fear of arrest,



when the dispute purely was civil, it is next submitted that the entire dispute in between the petitioners and the informant was amicably settled at Rs. 45 lacs for which a written agreement dated 24.07.2015 was made, the petitioners paid the said amount of Rs. 45 lacs thereafter also the informant was not satiated, hence, another Rs. 10 lacs was paid to the informant, as such, the petitioners paid about Rs. 55,00,000/- (Rupees Fifty Lacs) to the Opposite Party No.2 for resolving the dispute, but the O.P. No.2 after having accepted the amount did not relent and increased the negotiation to Rs. 70,00,000/- (Rupees Seventy Lacs). The learned counsel submits that petitioners were willing to pay the legitimate dues of the O.P. No.2 and the not the fanciful demand being raised, it is further submitted that if the Opposite Party No.2 was not willing to resolve the dispute why he accepted an amount of Rs. 55,00,000/- (Rupees Fifty Five Lacs), why he entered into an agreement dated 24.07.2015, it is next submitted that this amply demonstrates that the dispute was civil to which a criminal colour was given only with



a view to coerce the petitioners into submissions so that they fulfill the fanciful demand being raised by the Opposite Party No.2.

8. The learned A.P.P. for the State along with learned counsel for the O.P. No.2 vehemently opposes the submissions made by the learned counsel for the petitioners, but learned counsel for the O.P. No.2 is not in a position to rebut the submissions of the learned counsel for the petitioners that an amount of Rs. 55 lacs has been accepted by the Opposite Party No.2, further the learned counsel is also not in a position to rebut the submissions of the learned counsel for the petitioners that company which is a juristic person and can sue and can be sued is not made an accused in the F.I.R., as such, in absence of the company being made an accused the prosecution against the petitioners cannot proceed, but at this stage the learned counsel for the Opposite Party No.2 submits that no doubt company is a juristic person but was not made accused, but then company has gone bankrupt and is before the N.C.L.T, Chandigarh and the N.C.L.T.,



Chandigarh has passed an order for moratorium and has also appointed an IRP, on which the learned counsel for the petitioners submits that in that event the only remedy of the O.P. No.2 now is before the N.C.L.T, Chandigarh to seek his dues, if any.

9. Considering the submissions made by the learned counsel for the petitioners and taking into account the facts of the case as recorded hereinabove, the order dated 04.07.2016 passed by the learned Judicial Magistrate, 1st Class, Patna in connection with Budha Colony P.S. Case No. 145 of 2015, Tr. No. 1357 of 2015, whereby cognizance of offences has been taken under Sections 406, 420 and 34 of the Indian Penal Code, is hereby quashed.

10. The quashing application is thus allowed.

(Satyavrat Verma, J)

Nilmani/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.10.2023
Transmission Date	N.A.

