IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30224 of 2017

Arising Out of PS. Case No.-226 Year-2012 Thana- NATHNAGAR District- Bhagalpur

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Amit Anjani Poddar, Son of Sri Vishwanath Poddar, resident of 7/1, 1st Floor, Agathiar Street, Teachers Colony, P.S. Surampatti, District- Erode- 638011 Tamilnadu. ... ... Petitioner/s

Versus

1. State of Bihar
2. Ravi Kumar Dhandhania, son of Sri Biswanath Dhandhania, resident of 17F, Rajaji Road, P.S. Hastampatti, Town and District- Salem- 636007 Tamilnadu.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv.
Mr. Atal Bihari Pandey, Adv.
Mr. Alok Kumar Jha, Adv.
Mr. Mukund Kumar, Adv.
Mr. Akash Kumar, Adv.

For the Opposite Party/s : Mr. Ashok Kumar Choudhary, Sr. Adv.
Mr. Amitabh Sohan, Adv.
Mr. Akshansh Ankit, Adv.

For the State : Mr. Chandra Bhushan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

7 11-12-2023

1. Heard learned counsel for the petitioner Mr. Gautam Kumar Kejriwal, learned A.P.P. for the State along with learned senior counsel for the O.P. No.2 Mr. Ashok Choudhary.

2. The present application has been filed seeking quashing of the order dated 02.03.1016 passed by the learned Additional Chief Judicial Magistrate, Bhagalpur in connection with Nath Nagar P.S. Case No. 226 of 2012, G.R. No. 3453 of 2012 whereby cognizance has been taken for the offences under Sections 406, 420, 467, 468, 471 and 120B of the Indian Penal Code.

3. The learned counsel for the petitioner at the outset before making submission on merits of the case submits that the

Hon'ble Supreme Court in the Case of **Bimla Tiwary vs. State of Bihar, SLP (Crl.) No. 834-835 of 2023** has held that "*criminal law cannot be used for arm-twisting and money recovery as the recovery of money is essentially within the realm of civil proceeding*." The learned counsel for the petitioner next submits that the aforesaid decision of the Hon'ble Supreme Court is being relied only for the reason that in the nature of allegation and the facts as emerging from the allegations, it would manifest that the present F.I.R is nothing but an abuse of the process of the court and has been instituted for recovering money by taking recourse to criminal proceeding.

4. The learned counsel next submits that the informant instituted the aforesaid FIR, alleging that he is Managing Director of the Company, namely, M/s. Dhandapani Spinning Mills Ltd. (hereinafter referred to as 'DSML'), the Head Office of which is situated at Salem (Tamilnadu). It is next alleged that the informant (opposite party no. 2) has established a Branch of the said company at K.B. Lal Road, Nath Nagar in the year 2010, where one Ajay Kumar Agrawal was employed as a staff who used to look after the work of the company at the said Branch Office. It is next alleged that the said employee was required to sell the stock of yarn supplied by the company in the

market and deposit the collection in the bank account of the company. It is also alleged that on 26.11.2011, the informant enquired from Ajay Kumar Agrawal with regard to the stock of yarn worth Rs.45 lakhs, cash Rs.55 lakhs and collection of Rs.35 lakhs, when Ajay Kumar Agrawal replied that he had already left the job and had handed over the stock of yarn worth Rs.45 lakhs, cash Rs.55 lakhs and the amount of collection to the brother-in-law of the informant Amit Anjani Poddar (petitioner). It is further alleged that the informant accordingly approached the petitioner, who assured payment of the amount, as alleged, at the earliest and further deposited Rs.22 lakhs thereafter since 08.12.2011 did not deposit the balance amount of Rs.1 crore 13 lakhs rather the petitioner raised a claim of Rs.1.25 crores against the firm of the informant whereas to the best of the knowledge of the informant there is no agreement regarding the sale of yarn from the Branch Office of the company of the informant at Bhagalpur executed with the petitioner. It is thus alleged that petitioner in connivance with Ajay Kumar Agrawal misappropriated an amount of Rs.1,13,00,000/- of the informant.

4. Learned counsel for the petitioner submits that from perusal of the allegation as alleged in the FIR, it would

manifest that the dispute appears to be civil in nature to which a criminal colour has been given. It is next submitted that from perusal of the allegation in the F.I.R, it would manifest that the informant himself alleges that the petitioner raised a claim of Rs.1.25 crores against his company but then to his knowledge there was no agreement in respect of selling of yarn with the petitioner. It is next submitted that when the petitioner raised his claim of Rs.1.25 crores when the present FIR came to be instituted. It is also submitted that the dispute apart from being civil is also on account of differences in the family of the informant with the petitioner as the petitioner was married to the sister of the informant. It is further submitted that the sister of the informant was married to the petitioner in the year 2002 and out of the wedlock a child was born but on account of misunderstanding and allegation of torture, the marriage was dissolved by virtue of an order dated 03.08.2013 (Annexure-2 to the quashing application), which created animosity between the petitioner and the informant.

5. Learned counsel for the petitioner next submits that petitioner is having a proprietorship firm in the name and style of M/s. Anjani Associates having its place of business at Erode (Tamilnadu) and is actively dealing in supply of yarn all

over the country to various dealer. The opposite party no. 2 also deals in similar such business of yarn and thus had opend one office in Bihar at Nath Nagar, Bhagalpur. It is further submitted that the petitioner in between 12.08.2011 to 03.11.2011 had supplied by way of consignment yarn to the Branch Office of the company of the opposite party no. 2 worth Rs.1,29,00,000/- as would be evident from the consignment notes (Annexure-3 to this application) issued by the transporter and also from the extract of cash-book enclosed with the FIR. It is next submitted that the opposite party no. 2 in spite of having sold off the consignment of stocks forwarded by the petitioner did not remit the value of the consignment to which the petitioner was entitled, further the opposite party no. 2 on persuasion also paid a sum of Rs.25 lakhs in between 05.12.2011 and 07.12.2011 against the total sum of Rs.1.29 crores by way of RTGS (Annexure-4 to this application) but when the entire amount was not paid, the petitioner wrote letters to the opposite party no. 2 and even sent reminders in between 09.12.2011 to 04.01.2012 as would be evident from Annxure-5 to the quashing application. The learned counsel for the petitioner at this stage draws the attention of the court to the F.I.R. at page 25 of the quashing application to reiterate his submission that the O.P. No.2 herein has specifically alleged that on 26.11.2011 Ajay Kumar Agrawal had informed him that he had left his job and in order to seek information with regard to yarn worth Rs. 45 lakh, cash worth Rs. 55 lakh and the money collected worth Rs. 35 lakh be taken from the petitioner, it is submitted that the allegation amply demonstrates that the O.P. No.2 herein at least on 26.11.2011 was aware that Ajay Kumar Agrawal has left his job and had handed over the entire fund including the yarn to the petitioner, which the petitioner was not returning, it is next submitted that the said allegation was only by way of defence in order to give serious colour to the case when the O.P. No.2 himself was owing an amount of Rs. 1, 29,00000/- of the petitioner and he also made a payment of Rs. 25 lakh on 07.12.2011 as would be evident from page 73 to the quashing application, it is thus submitted that if the petitioner had siphoned of the money of the O.P. No.2 of which the O.P. No.2 came to know on 26.11.2011 itself, then why would the O.P. No.2 would have paid an amount of Rs. 25 lakh to the petitioner rather would have insisted for getting the amount adjusted towards his due but then the same was not done, this amply demonstrates that petitioner owed nothing to O.P. No.2.

6. The learned counsel for the petitioner thus

submits that from the facts submitted as recorded hereinabove, it would manifest that there was a business transaction between the petitioner and the informant and the informant has also paid an amount of Rs.25 laksh by way of RTGS though the remaining amount till date has not been paid. It is further submitted that the petitioner thereafter sent a legal notice dated 08.06.2012 under Section 433 of the Companies Act, 1956 (Annexure-6 to this application) to the informant but when the legal notice was not replied a company petition being Company Petition No. 254 of 2012 was filed before the Hon'ble Madras High Court. The learned counsel submits that the petitioner in the Company Petition No. 254/2012 had raised all his claims against the O.P. No.2, it is further submitted that O.P. No.2 filed his reply denying the claims of the petitioner in the company petition but the learned Company Judge though dismissed the company petition but recorded certain facts in favour of the petitioner with regard to the dues owed by O.P. No.2.

7. The learned counsel submits that thereafter the petitioner filed Company Appeal vide OSA No. 75 of 2014 against the order dated 29.10.2013 by which the Company Petition No. 254/2012 was dismissed before the Appellate Bench, it is submitted that the Appellate Bench by an order

dated 07.08.2023 set aside the order dated 29.10.2013 with a direction that the company petition shall be admitted and the Hon'ble Company Judge shall proceed with the case.

8. The learned counsel next submits that since the issues as raised in the company petition against the O.P. No.2 is still to be adjudicated and the matter is pending whether it would be prudent to allow the present criminal proceeding to continue when the F.I.R. came to be instituted on 24.12.2012 after filing of the company petition and also after nearly more than a year after the O.P. No.2 came to know as alleged in the F.I.R. by Ajay Kumar Agrawal that information with regard to the yarn and cash be taken from the petitioner. The learned counsel thus submits that if the O.P. No.2 was sanguine that certain amount was due with the petitioner as the petitioner was not accounting for the amount of yarn and the cash which was collected as recorded hereinabove on 26.11.2011 then why the present F.I.R. was instituted on 24.12.2012, it is submitted that the F.I.R. was instituted only in order to create pressure upon the petitioner so that he does not pursue with his company petition before the Hon'ble Madras High Court.

9. The learned counsel further submits at the cost of repetition that criminal proceeding cannot be instituted with an

intention to recover money and the courts should not act like a recovery agent, when the petitioner has remedy of seeking his money back in a duly constituted civil proceeding.

10. The learned senior counsel appearing on behalf of the O.P. No.2 submits that on very same sets of facts both criminal and civil proceeding may arise and even if civil remedy is availed by a party he is not precluded from setting in motion a criminal proceeding or continue with the criminal proceeding if already initiated, matter has to be determined on the facts of each case and for this proposition relies on the judgment of the Hon'ble Supreme Court in the case of **K. Jagdish Vs. Uday Kumar G.S. & Anr. 2020 (14) SCC Page 552**. What has been submitted by the learned senior counsel for the O.P. No.2 cannot be disputed but then the issue is that facts of the case is to be appreciated. In the present case what is not disputed rather stands admitted from the FIR itself that a matrimonial dispute is existing in between the petitioner and the O.P. No2, as the sister of the O.P. No.2 was married to the petitioner and ultimately their marriage was dissolved in the year 2013, further though the O.P. No.2 alleges that on 26.11.2011 he came to know from Ajay Kumar Agrawal that cash and yarn have been handed over to the petitioner, which the petitioner is not accounting but then

the O.P. No.2 paid an amount of Rs. 25 lakh to the petitioner by way of RTGS on 07.12.2011 which definitely points to the fact that if what has been alleged in the FIR would have been true then definitely the O.P. No.2 would not have paid an amount of Rs. 25 lakh by way of RTGS to the petitioner on 07.12.2011, further the learned senior counsel is not in a position to rebut the submission of the learned counsel for the petitioner with regard to the company petition, where the petitioner has raised his claim agianst the O.P. No.2 and the learned Company Judge though dismissed the company petition but had recorded the facts in favour of the petitioner and company petition was ultimately remanded on appeal as recorded hereinabove. The learned counsel for the petitioner at this stage submits that the present F.I.R was instituted after a delay of more than an year from 26.11.2011, only with a view to coerce the petitioner into submission so that under threat of criminal case he parts with the amount which the O.P. No.2 is alleging to be due and does not pursue the company petition, when it is the O.P. No.2 who owes money to the petitioner for which the company petition has been filed.

11. The learned counsel for the petitioner next relies on a judgment of the Hon’ble Supreme Court in the case

of **Salib @ Shalu @ Salim vs. State of U.P. and Ors. 2023(3) PLJR 389 (SC)** and draws the attention of the Court to Para 26 of the judgment which reads as under:-

> "26. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complainant is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and if need be, with the due care and circumspection try to read in between the lines. The Court while exercising its

> jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowers to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issues of wreaking vengeance out of private or personal grudge as alleged."

12. The learned counsel for the petitioner thus submits that when the Court is exercising its inherent jurisdiction under Section 482 of the Cr.P.C. which is to be used sparingly, but then while dealing with the case, it is not enough for the Court just to look into the averments made in the F.I.R./Complaint alone for the purposes of ascertaining whether the necessary ingredients to constitute the alleged offences are disclosed or not, it is next submitted that the Court must be circumspect while dealing with frivolous or vexatious proceedings by looking into many other attending circumstances emerging from the record of the case over and above the averments and if need be, with due care and circumspection tried to read in between the lines, further the Court while exercising its jurisdiction under Section 482 of the Cr.P.C. or

Article 226 of the Constitution of India need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the registration of the case as well as the materials collected in the course of investigation. The learned counsel thus submits that in the nature of allegation and the facts recorded hereinabove, it can safely be construed that no offence under sections 406, 420, 467, 468, 471 and 120B of the Indian Penal Code is made out.

13. Considering the submission made by the learned counsel for the petitioner and the case law recorded hereinabove, the order dated 02.03.1016, passed by the learned Additional Chief Judicial Magistrate, Bhagalpur, in connection with Nath Nagar P.S. Case No. 226 of 2012, G.R. No. 3453 of 2012, whereby cognizance of the offences under Sections 406, 420, 467, 468, 471 and 120B of the Indian Penal Code has been taken against the petitioner is hereby quashed.

14. It is made clear that the present order of cognizance has been quashed only with respect to the petitioner herein.

(Satyavrat Verma, J)

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