

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4260 of 2023

Arising Out of PS. Case No.-1453 Year-2021 Thana- PATNA COMPLAINT CASE District-
Patna

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1. MR. RAKESH KUMAR S/o Navin Chandra Srivastava S/o Navin Chandra Srivastava, Circulation Head, Hindustan Media Ventures Ltd. Having Its Office At Budh Marg, P.S.- Kotwali, P.O.- G.P.O., Patna, Bihar-800001.
 2. Mr. Prem Kant Jha S/o Late Dinanath Jha S/o Late Dinanath Jha, Circulation Manager, Hindustan Media Ventures Ltd. Having Its Office At Budh Marg, P.S.- Kotwali, P.O.- G.P.O., Patna, Bihar-800001.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Md. Kamluddin Azad S/o Md. Jiyauddin Azad R/o Flat no. 401, Madhuri Villa Appartment, A.N. Road, S.K. Puri (North), Boring Road, Patna-800013.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dayanand Singh
For the Opposite Party/s : Mr. Chandra Bhushan Prasad

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 18-08-2023 Heard learned counsel for the petitioners and learned APP for the State. None appears for the opposite party no. 2 despite service of notice.

2. This application has been filed for setting aside/ quashing the impugned order dated 20.06.2022 by which learned Judicial Magistrate, First Class, Patna has taken cognizance against the petitioners in Complaint Case No. 1453 (C) of 2021 registered under Sections 467, 468, 420, and 120 of the Indian Penal Code, 1860.

3. As per prosecution case, complainant is a



businessman doing his business in name and style of “DANISH NEWS”. That his wife namely Mrs. Rabia Khatoon runs a News Agency in the name and style of R. K. News Agency. The complainant has further alleged that in May 2019, the petitioner company vide an agency agreement appointed his wife agency i.e. R. K. Agency as its Sell/Distributing Agent in the Region/Area of district Bhagalpur, Bihar for the sale and distribution. It is further alleged that in context of appointment an agreement was also executed between the parties. The complainant was asked by the accused to deposit Rs. 30 Lacs as a security amount, accordingly the complainant deposited the said amount vide a cheque bearing no. 00004 from her A/c No. 50200029274640 of HDFC Bank, Purnia branch paid Rs. 30 lacs to the accused No. 1 Company. It is further alleged by complainant that as per agreement complainant had made payment to the Hindustan Media Venture Limited till January, 2020. The complainant found irregularity in the billing of which was against the term and conditions of the agreement. It is further alleged that all the accused were dictating their own terms and gaining profit illegally from the complainant. It is further alleged that as vide an email informed the complainant that they have terminated the contract with effect from



01.05.2020 and demanded Rs. 232613/- from the complainant. It is further stated that in order to cheat the complainant the accused also forged his signature on the cheque bearing no. 000011 of A/c 01861930010379 HDFC Bank, Exhibition Road and tried to withdraw an amount of Rs. 232613/-. On the basis of said allegation a complaint bearing Complaint Case No. 1453(c) of 2021 filed against accused persons.

4. The petitioner no. 1 has been arrayed as accused no. 2 and petitioner no. 2 as accused no. 3 in the complaint petition. From plain reading of the complaint petition, it can be described as *accounting dispute* arising out of commercial agreement. From plain reading of allegation made in complaint case and it can be described as *Civil dispute* in a commercial transaction.

5. That complainant was in business relation with the company arising out of written business agreement called "Agency Contract". The complainant as well as Hindustan Media Ventures Limited are bound by terms and conditions of the said agency contract. The dispute between the parties can be described as civil dispute arising out of commercial contract and by no stretch of imagination any criminal offence can



be fastened upon the petitioner who is an employees of Hindustan Media Ventures Limited. The necessary ingredients for fastening offences under sections 467, 468, 406, 420 and 120B of the Indian Penal Code against the petitioner is lacking. From the bare perusal of complaint case, it is quite apparent that entire dispute is in connection with settlement of account of business transaction between the parties arising out of commercial contract.

6. From reading the complaint and the entire materials available on record, it appears that the opposite party no. 2 and the company Hindustan Media Ventures Ltd. entered into a business relationship and with regard to the bouncing of cheque a Complaint Case No. 1921 of 2021 was filed in Karkadoona Court against the petitioner in which opposite party no. 2 has also appeared. It appears that *mala fide* prosecution in a civil dispute has been launched by the opposite party no. 2 to wreck vengeance upon opposite party no. 2. Recently in the case of ***MAHMOOD ALI & ORS. VS. STATE OF UP & ORS (CRIMINAL APPEAL NO. 2341 OF 2023 (ARISING OUT OF S.L.P. (CRIMINAL) NO. 12459 OF 2022*** In para 12, it has been held as follows.

12.” At this stage, we would like to observe something important. Whenever an accused



comes before the court of 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/complaint 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 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 empowered 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 issue of



wreaking vengeance out of private or personal grudge as alleged.

7. Considering the entirety, I come to the finding that it is a civil dispute which has given a colour of criminal case by the opposite party no. 2 and the opposite party no. 2 has filed a *malafide* prosecution against the petitioners which cannot be sustained.

8. In view of above, this application is allowed.

9. The order dated 20.06.2022 by which learned Judicial Magistrate, First Class, Patna has taken cognizance against the petitioners in Complaint Case No. 1453 (C) of 2021 is hereby quashed.

(Sandeep Kumar, J)

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