

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24833 of 2015
Arising Out of PS. Case No.-252 Year-2012 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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Sishir Parida @ Sishir Kumar Parida.

... .. Petitioner/s

Versus

State Of Bihar and Anr.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Singh, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 14-02-2023 Heard learned counsel for the petitioner and

learned APP for the State despite valid service of notice none

appears for opposite party no.2.

This application has been filed for quashing the
order dated 13.08.2012 passed in Complaint Case o. 252C of
2012 by learned Judicial Magistrate 1st Class, Begusarai by
which cognizance has been taken for the offence under Sections
403, 417 and 323 of the Indian Penal Code.

The prosecution case as per the complaint is that
the complainant is the proprietor of the company which deals
with labour supply and other works. He had entered into an
agreement with the Ariva T. & D. India Limited at Sepco,
Orissa, Angul for labour supply on 28.06.2011 and the petitioner
is one of the employees of that company. The petitioner was
promised payment for executing the work of the company. It is



further alleged by the complainant that the civil work and labour work in Switchyard was completed and the bill of Rs. 12,04,000 was submitted to the company. The company has paid Rs. 4,24,000 to the complainant. Thereafter, the complainant demanded remaining amount which has not been paid. It is further alleged that the accused persons came to the office of the petitioner in Begusarai took his signature on blank paper on the point of pistol and snatched the golden chain and Rs. 15,000 cash from the possession of the complainant.

Learned counsel appearing for the petitioner has made the following submissions.:-

(A) The prosecution is bad in law as company has not been made an accused in the complaint.

(B) A civil dispute is being given the colour of a criminal dispute.

(C) The entire dispute relates to work done in Sepco, Orissa, Angul and the complaint case has been filed at Begusarai and therefore, the Court at Begusarai do not have any jurisdiction to take cognizance of the matter.

(D) Learned counsel has submitted that the submissions made by the petitioner can be raised at the time of framing of charge and this Court may not interfere and examine



the allegations at the stage of cognizance.

Heard the parties.

The Supreme Court in the case of ***Ashok Chaturvedi and Others vs. Shitul H. Chanchani & Anr. 1998*** (7) SCC 698 5 of the aforesaid judgment reads as follows:-

“But the question that yet remains for consideration is whether the allegations made in the petition of complaint together with statements made by the complainant and the witnesses before the Magistrate taken on their face value, do make the offence for which the Magistrate has taken cognizance of? The learned counsel for the respondent in this connection had urged that the accused had a right to put this argument at the time of framing of charges, and therefore, this Court should not interfere with the order of the Magistrate taking cognizance, at this stage. This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from approaching the court even at an earliest (sic earlier) point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised. Bearing in mind the parameters laid down by this Court in several decisions for exercise of power under Section 482 of the Code, we have examined the allegations made in the complaint petition and the statement of the complainant and the two other witnesses made on oath before the Magistrate. We



are clearly of the opinion that the necessary ingredients of any of the offences have not been made out so far as the appellants are concerned. The petition of complaint is a vague one and excepting the bald allegation that the shares of the complainant have been transferred on forged signatures, nothing further has been stated and there is not an iota of material to indicate how all or any of these appellants are involved in the so-called allegations of forgery. The statement of the complainant on oath as well as his witnesses do not improve the position in any manner, and therefore, in our considered opinion, even if the allegations made in the complaint petition and the statement of the complainant and his witnesses are taken on their face value, the offence under Sections 406, 420, 467, 468 and 120-B of the Indian Penal Code cannot be said to have been made out. This being the position, the impugned order of the Magistrate taking cognizance of the offence dated 05.02.1996 so far as it relates to the appellants cannot be sustained and the High Court also committed error in not invoking its power under Section 482 of the Code. In the aforesaid premises, the impugned order of the High Court as well as the order of the Magistrate dated 05.02.1996 taking cognizance of the offence as against the appellants stand quashed.”

The Supreme Court in a number of cases has held that use of criminal law for settling the civil dispute is an abuse of the process of law and in appropriate cases, the criminal proceeding should be quashed.

In the present case, from reading the complaint it appears that the complainant had dispute with regard to payment for money for which he could have filed a money suit and filing of criminal complaint for realization of his balance payment is nothing but an abuse of the process of the Court.

In the present case, reading of the complaint does



not disclose a criminal offence. So far as the allegations at the end of the accused persons came to Begusarai and took out of Rs. 15,000 from the pocket of the petitioner and got his signature, these allegations are ornamental.

So far as the allegation of getting signature on Blank Paper is concerned, no offence is made out as has been held by the Supreme Court in the case of Justice *Sardar Triloki Singh and others vs. Satya Deo Tripathi* 1979 (4) SCC 396.

The Supreme Court in the case of *R. Kalyani vs. Janak C. Mehta* 2009(1) SCC 516 has also held that the officials of the company can only be prosecuted when the company is also accused and the prosecution will fail if the company has not been made accused in the complaint.

So far as jurisdiction to file the complaint, it appears that the Begusarai Court has no jurisdiction and the complainant has included some allegations which said to have been made at Begusarai only to create jurisdiction. It is an admitted position that the agreement was done at Sepco, Orissa, Angul. The work was completed at Sepco, Orissa, Angul and the payment was received by the complainant at Sepco Orissa Angul.

In the opinion of this Court on the judgment of



Supreme Court in the case of *Y. Abraham Ajit vs. Inspector of Police 2004 (8) SCC 100* covers this case.

In view of above discussions, this application is allowed.

The entire criminal proceeding in Complaint Case No. 252C of 2012 including the order taking cognizance dated 13.08.2012 is quashed.

(Sandeep Kumar, J)

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