IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49749 of 2015

Arising Out of PS. Case No.-936 Year-2013 Thana- NALANDA COMPLAINT CASE District- Nalanda

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Ajay Kumar Sao @ Ajay Kumar Shaw, Son of Late Babulal Shaw, Resident of Village- 157/A/H/A, Sri Aurobinda Sarani, Hathi bagan, P.S.- Shyampur, Kolkata, West Bengal.

... ... Petitioner

Versus

1. The State of Bihar.
2. Ajay Kumar Gupta @ Ajay Prasad, Son of Late Bishun Shaw, Resident of Mohalla - Hajipur (Chaukandipar), P.S.- Bihar, District - Nalanda

... ... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Jagjit Roshan, Advocate
For the State	:	Mr. Shailendra Kr. 2, APP
For the O.P. No. 2	:	Ms. Madhuri Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date : 20-09-2023

Heard learned counsel for the petitioner, learned APP for the State and learned counsel for the complainant-opposite party no. 2.

2. The petitioner in this case is seeking setting aside of the order dated 24.02.2014 passed by learned Chief Judicial Magistrate, Nalanda, Bihar Sharif in Complaint Case No. 936 (C) of 2013 for the offences under Sections 420, 406, 323, 34 of the Indian Penal Code.

3. The complainant-opposite party no. 2 filed a complaint case in the court of learned Chief Judicial Magistrate, Nalanda against the sole accused-petitioner who is a resident of the

State of West Bengal having his permanent address as that of the State of Jharkhand.

4. From a bare reading of the complaint petition, it would appear that admittedly the complainant and the petitioner were good friends and they were residing together at one stage. The case of the complainant is that this petitioner had suffered loss in business and with an intention to help his friend, the complainant arranged a sum of Rs.1,50,000/- through his cousin brother, namely, Madal Lal Gupta. The financial condition of the petitioner improved whereafter he started a company, namely, "Shiv Shakti Air Cargo" in which he put Madan Lal Gupta as his equal partner. It is stated that on 07.04.2006 Madan Lal Gupta transferred a sum of Rs.1,50,000/- from his C/C account to the bank account of this petitioner in the Bank of India at Shyam Bazar Branch, Kolkata. There had been some issues with respect to the accounting of the firm, it is alleged that the petitioner had committed fraud with his partner Madan Lal Gupta. Madan Lal Gupta started demanding his money which he had given to the petitioner but the same was not returned whereafter he gave a power of attorney to the complainant which authorized the complainant to take legal action against the petitioner.

5. At this stage, it is alleged that the complainant submitted an application with the Officer-in-Charge, Shyam Pokhar at Kolkata on 28.07.2012 to call the complainant and the petitioner and made them enter into a written agreement whereunder the petitioner agreed to pay a sum of Rs.1,75,000/- to the complainant-opposite party no. 2. It is alleged that after the said compromise, the petitioner issued few cheques of a sum of Rs.25,000/- each but later on it was found that instead of drawing the cheque in the name of Ajay Prasad, it was drawn in the name of Ajay Gupta. The complainant brought it to the notice of the petitioner whereupon the petitioner returned the two cheques and issued two bearer cheques in the name of the complainant for Rs.25,000/- each which the complainant encashed.

6. The allegation is that thereafter the complainant kept on demanding money from the petitioner, the petitioner promised him to return the money after two months but thereafter the complainant met the petitioner at the Bihar Sharif Railway Station and believing the words of the petitioner, he handed over two cheques to the petitioner but after receiving both the cheques, the petitioner refused to pay the amount. It is also alleged at this stage that when the accused demanded three more cheques from the complainant, a scuffle took place between the complainant and the accused and their friends. Allegedly, in the meantime, the petitioner fled away with the cheques which were handed over to the complainant. It is alleged that in this manner, the accused has committed fraud with the complainant. With regard to the alleged occurrence which took place on 09.07.2013 at the Railway Station, he met the Officer-in-Charge of the Police Station on 10.07.2013 but the Officer-in-Charge refused to receive the complaint.

7. Learned counsel for the petitioner points out at this stage that the dates mentioned in the complaint petition have been over-written, moreover, it would appear that the complaint petition was prepared in advance and was kept ready for filing which was filed on 11.07.2013 by over-writing the dates in paragraphs '16', '23' and '24' of the complaint petition. It is pointed out that the complaint petition bears the stamping of court fee on 15.05.2013 which clearly shows that the complaint petition was prepared in advance and the relevant dates were filled up later on at the time of filing.

8. While assailing the impugned order taking cognizance and issuance of summons, learned counsel for the petitioner submits that on a bare reading of the complaint petition, it would appear that the whole dispute has arisen out of an alleged friendly loan said to have been given by the cousin brother of the complainant. It is alleged that after the said loan was advanced, the financial condition of the petitioner improved and he had started a company in which the said cousin brother was made a partner. Therefore, for a long time, after the alleged amount was arranged through the cousin brother of the complainant, the cousin brother himself was working as partner with the petitioner in the business firm.

9. It is submitted that the whole story of handing over of cheques and then taking away of the cheques in the manner stated allegedly from the Railway Station would not inspire confidence because if such an incident would have taken place on 09.07.2013 at the Railway Station, there was no reason for the complainant not to report the same immediately with the Railway police and to wait for the next date to go to the police station.

10. It is further submitted that the allegations of scuffle is only an ornamental and frivolous kind of allegations.

11. It is further submitted that even though the sole accused was living outside the territorial jurisdiction of the court of learned Chief Judicial Magistrate, Nalanda, the learned Presiding Officer did not follow the procedures prescribed under Section 202 Cr.P.C. and no inquiry was made as envisaged by postponing the summons against the accused-petitioner. It is submitted that in any case, a criminal proceeding in the present matter would only be an abuse of process of court as it has been brought for recovery of money.

12. The case has been contested by learned counsel for the complainant-opposite party no. 2. In course of her submissions, learned counsel, however, admits that the complaint case has been presented for recovery of money. She has made a prayer that the petitioner be asked to make payment of the amount which he had received from the cousin brother of the complainant in the year 2006. It is also submitted that in any case the allegation of the scuffle which took place at the platform in which the complainant was assaulted is such that it may not be interfered with in exercise of power under Section 482 Cr.P.C.

13. Having heard learned counsel for the petitioner and learned counsel for the complainant-opposite party no. 2 as also on perusal of the records, this Court finds that there is an admission of the complainant that he and the petitioner were good friends and they were living together. The alleged friendly loan was advanced to the petitioner in the year 2006 whereafter again according to the complainant, the petitioner and the cousin brother of the complainant who had advanced the loan had been working as partner in the Company started by this petitioner. According to the complainant, there were certain disputes with respect to the accounts of the firm, however, nothing has been stated beyond this in the complaint petition. The allegation is that the complainant had handed over cheques to pay the agreed amount of Rs.1,75,000/- and out of that two cheques were taken back on finding that the name of the complainant was wrongly mentioned, however, the admission of the complainant is that the petitioner had issued two bearer cheques in lieu thereof and the cheques were encashed. The allegation that the other cheques were taken away by the petitioner and thereafter on demand the payments were not made are the reasons for filing of the complaint.

14. On a complete reading of the complaint petition, this Court is of the considered opinion that the filing of the complaint petition against the petitioner after about seven years from the date of alleged advancement of friendly loan by the cousin brother of the complainant is nothing but an abuse of the process of court. The complaint has been filed only for recovery of money. Even if the statements made in the complaint petition are taken on its face value, the fact remains that there has been an agreement between the parties for payment of Rs.1,75,000/- and in connection therewith two bearer cheques were issued by the petitioner in the name of the complainant which were also encashed. Thus, the dispute, if any, remained to the extent of the remaining amount only. In the case of **Inder Mohan Goswami and Another Vs. State of Uttranchal and Others** reported in **(2007) 12 SCC 1**, the Hon'ble Supreme Court has put a word of caution while taking note of the growing trend of converting the purely civil disputes into a criminal proceeding. Paragraph '30' of the judgment in the case of **Inder Mohan Goswami** (Supra) is quoted hereunder for a ready reference:-

> "**30.** The Court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The Court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court."

15. This Court has further noticed that there is a non-compliance on the part of the learned Magistrate of the mandatory provision under Section 202 Cr.P.C.

16. Section 202 Cr.P.C. reads as under:-

> "**202. Postponement of issue of process**.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of

process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by which such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

Amendment Act, 2005.- False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before

> summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

17. In the case of **National Bank of Oman Vs. Barakara Abdul Aziz and Another** reported in **(2013) 2 SCC 488**, the Hon'ble Supreme Court had occasion to deal with this provision and paragraphs '8' and '9' of the judgment reads as under:-

> "**8.** We find no error in the view taken by the High Court that the CJM, Ahmednagar had not carried out any enquiry or ordered investigation as contemplated under Section 202 CrPC before issuing the process, considering the fact that the respondent is a resident of District Dakshin Kannada, which does not fall within the jurisdiction of the CJM, Ahmednagar. It was, therefore, incumbent upon him to carry out an enquiry or order investigation as contemplated under Section 202 CrPC before issuing the process.
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> **9.** The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations

made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(*i*) on the materials placed by the complainant before the court;

(*ii*) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(*iii*) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have."

18. In the present case, the sole accused-petitioner was residing at a place beyond the area in which the learned C.J.M. was exercising his jurisdiction, therefore, it was incumbent upon him to postpone the issue of process against the accused and to either inquire into the case himself or direct the investigation to be made by the police officer for purpose of deciding whether or not there is any sufficient ground of proceeding. It is in the nature of a safeguard provided to an accused who is residing beyond the area in jurisdiction of the Magistrate and against whom a complaint is brought under Chapter XV of the Code of Criminal Procedure. This provision has been specifically made and the amendment to the extent "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction," was inserted by Act 25 of 2005 with a purpose to save an accused from sheer harassment in frivolous cases.

19. In this case, to this Court, it is evident that the complaint case was transferred by the learned C.J.M. and no care was taken to follow the aforesaid provision which has resulted in passing of a routine and mechanical kind of order taking cognizance by the learned C.J.M..

20. For the reasons aforesaid, the impugned order is set aside. The complaint is quashed.

21. This application is allowed.

(Rajeev Ranjan Prasad, J)

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