IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42131 of 2015

Arising Out of PS. Case No.-371 Year-2009 Thana- PATNA COMPLAINT CASE District- Patna

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Atc India Tower Corporation Pvt. Ltd. Post Office and Police Station and District Gurgaon, haryana, India and Circle Office at 2nd Floor, District Patna, Pin Code No. 800014, Bihar through its Circle Head and Authorized Signatory, Mr. Mandeep Singh Vij Son of Late manmohan Singh Vij.

... ... Petitioner/s

Versus

1. State Of Bihar and Anr
2. Brajnandan Prasad S/o Yamuna Prasad Resident of Village Deoriya, P.O. Bedauli, P.S. Bhagwanganj, District Patna.
3. Frontline (NCR) Business Solution Pvt. Limited 301, IIIrd Floor, Patna Super Market, Frazer Road, Patna

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Advocate
	:	Ms. Kanika, Advocate
	:	Md. Farooq, Advocate
For the Opposite Party/s	:	Smt. Madhuri Lata, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL ORDER

7 21-02-2024 1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present quashing petition has been preferred against the order dated 01.02.2010 passed in Complaint Case No. 371C of 2009, where learned Sub-Divisional Judicial Magistrate, Masaurhi took cognizance for the offence punishable under section 406 of the Indian Penal Code against the petitioner.

3. Opposite Party No. 2 & Opposite Party No. 3,

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fails to join the present proceedings.

4. From the crux of complaint petition it appears that O.P. No. 2 had deposited Rs. 5,500/- with O.P. No. 3 namely M/s. Frontline Business Solution on 20.05.2008. The O.P. No. 2 alleged that after the said payment he was appointed as caretaker by M/s. Frontline Business Solution. The O.P. No. 2 alleged that on the basis of the said appointment he served at the village Deoria. The O.P. No. 2 was issued a receipt for the site of XCEL and also photocopy of the identity card by the said Frontline Business Solution. The O.P. No. 2 has further stated that he was paid Rs. 2,200/- per month and he served till 10.12.2008 at village Deoria. It was alleged that the petitioner was ousted from service and accused Ram Prasad was appointed in his place. The O.P. No. 2 has alleged that he has been cheated by the accused persons.

5. It is submitted by learned counsel that petitioner is a registered company, which run its business with two signatory authorities in a particular circle/zone, where O.P. No. 3 is the business partner of the petitioner to execute the work of mobile tower installations at different locations of Bihar, which is also a private limited company duly registered under Companies Registration Act, 1956. It is further submitted by

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learned counsel that out of complaint, no *prima facie*, case is made out against petitioner company, where the allegation appears raised against O.P. No. 3 only as to terminate the services of O.P. No. 2, which may be the subject matter of service/labour law but by no way it is a case made out under Section 406 of the IPC against petitioner, who is business partner of O.P. No. 3, being a company.

6. While travelling over the argument learned counsel submitted that it is established principle of law that criminal liability cannot be fastened upon the employee of the company vicariously, when company itself was not made an accused. In support of the submissions learned counsel relied upon the report of Hon’ble Supreme Court in the case of **R. Kalyani Vs. Janak C. Mehta and Others** as reported in **(2009) 1 SCC 516,** wherein it has been held that if a person put on prosecution on the ground of vicarious liability for affairs of a company, it is also necessary to implead company as an accused so that legal faction may be raised against both company as well as against persons responsible for the act of the company. It is submitted that in the present case said principle is also applicable, *qua*, O.P. No. 3, because O.P. No. 2 was never employed, directly or indirectly by the petitioner. It is further

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submitted that for independent and separate act done by O.P. No. 3, who in itself is an independent company, petitioner company cannot be held liable. It is also pointed out that there is no allegation, *prima facie*, regarding dishonest intention in terms of Section 405 of the Indian Penal Code as to make out a, *prima facie*, case under Section 406 of the IPC.

7. In support of his submissions learned counsel relied upon the report of Hon'ble Supreme Court in the case of **Neelu Chopra and Another Vs. Bharti** as reported in **(2009) 10 SCC 184,** where he presses para no. 9 of the said report, which is as under:-

> "***9.*** *In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence."*

8. It would also be apposite to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335,*** which

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reads as under:

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first informant report and other materials,*

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if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of nay offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is

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instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. In view of aforesaid factual and legal discussions, where petitioner implicated in a very vague manner through signatory authorities, where complainant himself admitted that employment was given by O.P. No. 3, which is also a registered company duly registered, under Companies Act and an independent body, the present criminal proceeding appears manifestly attended with *malafide*, intention and ulterior motive against petitioner company. The allegation as set out by complaint are appearing absurd and inherently improbable as to make out sufficient ground for proceeding against petitioner company. Accordingly, by taking note of guidelines as mentioned in para nos. 1, 5 and 7 of **Bhajan Lal (supra),**

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impugned order of cognizance dated 01.02.2010 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Complaint Case No. 371 C of 2009, pending before learned Sub-Divisional Judicial Magistrate, Masaurhi is hereby quashed and set aside.

10. The application stands allowed.

11. Let a copy of this order be sent to learned Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

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