

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34338 of 2016

Arising Out of PS. Case No.-24 Year-2014 Thana- BUXAR District- Buxar

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Surendra Kumar Sharma @ Sonu Sharma S/o Vidyadhar Sharma, R/o
Village- Pustakalya Road, P.S. Buxar (T), District – Buxar.

... .. Petitioner/s

Versus

1. State Of Bihar

2. Urmila Verma, D/o Sri Ram Nath Verma, R/o – Village – Nehru Nagar,
behind Krishna Cinema, Buxar, P.S.- Buxar (T), District – Buxar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Digvijay Kumar Ojha, Advocate

For the Opposite Party/s : Mr. Jitendra Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 24-04-2024

Heard learned counsel for the petitioner and

learned counsel for the respondents.

2. The present quashing petition has been

preferred to quash the order dated 17.03.2016 passed

in Buxar (Town) P.S. Case No. 24 of 2014 (Trial No.

109 of 2016), where learned Chief Judicial Magistrate,

Buxar took cognizance for the offences punishable under



Sections 406 & 420 of the Indian Penal Code (in short IPC) against the petitioner.

3. Despite service of notice, Opposite Party No. 2 fails to join the present court proceedings.

4. The brief facts of this present case is based upon the written statement of Urmila Verma informant of this case to S.P. Buxar on 26.12.2013 stating therein *inter alia* that Ravi Prakash Verma and Sonu Sharma @ Surendra Kumar Sharma took her in confidence and showed that a share market is growing well and asked informant to make investment in that share, on which, the informant enquired about share market then both told her that said share market is in the name of M/s. Anand Rathi Share and Stock Brokers Ltd. branch is at Pustakalya Road in the house of Sonu Sharma (petitioner). Thereafter, the informant went to the branch and opened share market account. It is further alleged that informant sold her house in the year 2010 and after withdrawing Rs. 12,00,000/-, in the year



2010 invested in the share market as aforesaid, on which petitioner alongwith co-accused person furnished bond of aforesaid amount. After sometime informant desired to know her return from the aforesaid investment. When the above investment earned profit two cheques were issued for Rs. 45,000/- and Rs. 31,511/-, respectively. It is further alleged that informant came to know that Ravi Prakash sold her house and fled away and on 30.11.2012 he was caught by some persons, where he declared in writing that he will return the above amount to the informant but didn't return back.

5. Learned counsel appearing on behalf of petitioner submitted that from the narration of FIR, by any prudent way of imagination, it cannot be said that *prima facie* case for the offence under Sections 406 & 420 of the IPC said to be made out. It is submitted that impugned order of cognizance appears bad in eyes of law for so many reasons. In support of the submission



learned counsel submitted that from the face of allegation/narration of FIR, it appears that the dispute is civil in nature, which has been given a criminal colour. It is also pointed out that admittedly investment was made with M/s. Anand Rathi Share and Stock Brokers Ltd. which is a private limited company duly registered under Companies Registration Act, 1956 and has not been arrayed as an accused in this case, where admittedly petitioner was associated as sub-broker. It is further submitted that O.P. No. 2 settled his account in 2012, itself against cash of Rs. 76,737.97/- which is annexure 3/1 of the present petition.

6. While travelling over the argument learned counsel submitted that alleged occurrence is of year 2010, where account in issue was settled in 2012, thereafter lodging of the present case after two years of the occurrence appears in a planned and formulated manner just to harass the petitioner with ulterior and oblique motive. It is also pointed out that ulterior and



oblique motive can be established *prima facie* out of fact as informant/OP No. 2, who is a lady also lodged a police case of rape against petitioner, which has been registered as Buxar Mahila P.S. Case No. 20 of 2014 and as such the present proceeding can be safely said to be initiated with maliciously instituted prosecution with an ulterior motive for wrecking vengeance on petitioner with a view to spite him due to private and personal grudge.

7. While concluding the argument learned counsel relied upon the following reports of Hon'ble Supreme Court in the case of :-

(i). **State of Haryana and Others vs. Bhajan Lal and Others** as reported in [1992 Supp (1) Supreme Court Cases 335].

(ii) **Sushil Sethi and Another vs. State of Arunachal Pradesh and Others** as reported in [(2020) 3 SCC 240].

(iii) **Usha Chakraborty and Another Vs.**



State of West Bengal and Another as reported in
(2023) SCC Online SC 90.

8. Learned APP appearing on behalf of State, while opposing the application submitted that share market related activities was running from the house of petitioner showing his active involvement in the occurrence.

9. It would be apposite at this stage to reproduce Sections 405 & 415 of the IPC defining "criminal breach of trust" and "cheating" respectively for the better understanding of legal position of this case, in the available background of allegations, which are as:-

405. Criminal breach of trust.—

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of



any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

415. Cheating.— Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

10. It would be apposite to reproduce the paragraph no. 102 of **Bhajan Lal Case (supra)** which 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, 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 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.”

11. It would further be apposite to reproduce the para nos. 7.2, 7.5, 8.1 and 8.2 of the **Sushil Sethi Case (supra)**, which reads as under:-



"7.2. In Vesa Holdings (P) Ltd. v. State of Kerala, [(2015) 8 SCC 293], it is observed and held by this Court that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. It is further observed and held that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is further observed and held that even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420



IPC can be said to have been made out. It is further observed and held that the real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.

7.5. In Sharad Kumar Sanghi v. Sangita Rane, [(2015) 12 SCC 781], this Court had an occasion to consider the initiation of criminal proceedings against the Managing Director or any officer of a company where company had not been arrayed as a party to the complaint. In the aforesaid decision, it is observed and held by this Court that in the absence of specific allegation against the Managing Director of vicarious liability, in the absence of company being arrayed as a party, no proceedings can be initiated against such Managing Director or any officer of a company. It is further observed and held that when a complainant intends to rope in



a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability.

8.1. As observed hereinabove, the charge-sheet has been filed against the appellants for the offences under Section 420 read with Section 120-B IPC. However, it is required to be noted that there are no specific allegations and averments in the FIR and/or even in the charge-sheet that fraudulent and dishonest intention of the accused was from the very beginning of the transaction. It is also required to be noted that contract between M/s SPML Infra Limited and the Government was for supply and commissioning of the Nurang Hydel Power Project including three power generating units. The appellants purchased the turbines for the project from another manufacturer. The company used the said turbines in the power project.



The contract was in the year 1993. Thereafter in the year 1996 the project was commissioned. In the year 1997, the Department of Power issued a certificate certifying satisfaction over the execution of the project. Even the defect liability period ended/expired in January 1998. In the year 2000, there was some defect found with respect to three turbines. Immediately, the turbines were replaced. The power project started functioning right from the very beginning—1996 onwards. If the intention of the company/appellants was to cheat the Government of Arunachal Pradesh, they would not have replaced the turbines which were found to be defective. In any case, there are no specific allegations and averments in the complaint that the accused had fraudulent or dishonest intention at the time of entering into the contract. Therefore, applying the law laid down



by this Court in the aforesaid decisions, it cannot be said that even a prima facie case for the offence under Section 420 IPC has been made out.

8.2. It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In **Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692]** , it is observed and held by this Court that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the



company when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside."

12. It appears also apposite to reproduce the



paragraph no(s). 6, 7, 8 and 10 as reported through
Usha Chakraborty Case (supra), which reads as
under:

6. In *Paramjeet Batra v. State of Uttarakhand*, this Court held:—

“12. While exercising its jurisdiction under Section 482 of the Code of the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

7. In *Vesa Holdings Private Limited v.*



State of Kerala, it was held that:—

"13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings."

8. In *Kapil Aggarwal v. Sanjay Sharma*, this Court held that Section



482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

10. In Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, a three Judge Bench of this Court laid down the following principles of law:—

“57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases’. (The rarest of rare cases standard in its application for quashing under Section 482 Cr. P.C. is not to be confused with the norm



which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr. P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers



of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-



restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

13. In view of aforesaid factual and legal discussions, it appears that petitioner was sub-broker of M/s. Anand Rathi Share and Stock Brokers Ltd., which is a private limited company duly registered under Companies Registration Act, 1956. It is submitted that amount was deposited with the said company for further



investment in share market. It is an established principle of law that legal fiction of vicarious liability without impleading the company as an accused cannot be established. There is no dishonest intention from the very inception of alleged occurrence on the part of petitioner, as admittedly, amount deposited to the petitioner was invested in the share market, where informant received return two times for Rs. 45,000/- and Rs. 31,511/- present occurrence is of year 2010, where informant settled her account in year 2012, itself therefore lodging this case after two years i.e., in 2012 only suggests oblique and ulterior motive with harassing attitude.

14. Accordingly, by taking note of guidelines as mentioned in para nos. 1, 5 and 7 of **Bhajan Lal (supra) & also Usha Chakraborty Case (supra)** impugned order of cognizance dated 17.03.2016 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Buxar (Town) P.S. Case No. 24 of



2014 (Trial No. 109 of 2016), pending before learned
Chief Judicial Magistrate, Buxar is hereby quashed and
set aside.

15. The application stands allowed.

16. Let a copy of this judgment be sent to
learned Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	25.04.2024
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