IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33132 of 2018

Arising Out of PS. Case No.-1059 Year-2012 Thana- PATNA COMPLAINT CASE District-Patna

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M/s Angel Broking Private Limited (formerly known as M/s Angel Broking Limited), registered under the provisions of Companies Act, 1956, having its registered office at G-1, Akruti Trade Center, Road no. 7, MIDC Marol, Andheri (E), PS- Andheri (East), Mumbai-400093 through its authorized signatory cum Deputy Manager (Operations) namely Mr. Dhrubajyoti Mitra, s/o late B.K. Mitra, r/o 81/5A, Raja S.C. Mullick Road, PS-Naktala, Kolkata, West Bengal. ... ... Petitioner/s

Versus

1. State Of Bihar
2. Shyam Nandan Das S/o Late Dularchand Das, R/o Vill.- Arun Kumar M.R Railway Hunder Road, East Lohanipur, Kadamkuan, P.S.- Kadamkuan, Patna- 800003, present residing St. Marry School, Laljee Tola, Patna- 800001.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Rana Vikram Singh, Advocate
	:	Mr. Sanjeev Kumar, Advocate
For the Opposite Party/s	:	Mr. Dashrath Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 01-03-2024 1. Heard learned counsel for the parties concerned.

2. The petitioner has filed the present application for quashing the order of cognizance dated 17.12.2013, passed by learned Judicial Magistrate 1st class, Patna in Complaint case no. 1059(C)/ 2012, whereby the learned Magistrate has taken cognizance of the offence punishable under Section 418 of the Indian Penal Code.

3. The case of the prosecution, as per complainant-opposite party no. 2, is that the petitioner is a Broking Company and the complainant had purchased share worth Rs. 9 lacs from

the petitioner company on 26.12.2007. The complainant asked for returns from the invested share to the tune of Rs. 15 lacs but the accused persons remained silent. Further, when complainant demanded his money back, the accused persons threw the complainant out of the office and threatened him of dire consequences.

4. The complainant was examined on solemn affiirmation and thereafter, by the impugned order dated 17.12.2013, cognizance has been taken without examining any witness on behalf of complainant.

5. Learned counsel for the petitioner submits that M/s Rajat Intermediary Private Limited having its office at Patna, is sub-broker of the petitioner's Company. The petitioner's Company deals in sale and purchase of shares through M/s Rajat Intermediary Private Limited. The norms provided for brokerage service is that any person desirous of trading in share is admitted to dealings on the Stock Exchange as defined in Rule, Bye Laws and Regulations of such Exchange and has to enter into a written agreement which is called "Member Client Agreement". Referring to Member Client Agreement, annexed as Annexure-4, learned counsel submits that any dispute with the member with respect to deposits,

margin money etc. and producing an appropriate proof thereof, shall be subject to arbitration as per the Rules, Byelaws/ Regulations of B.S.E. or its Clearing Corporation/ Clearing House but Clause 1.3.10 of the agreement depicts that every member is required to send a complete 'Statement of Accounts', for both funds and securities settlement to each of its constituents, at such periodicity as may be prescribed by time to time. The members report errors, if any in the statement immediately but not later than 30 calendar days of receipt thereof, by the member. In case the error is not rectified or there is a dispute, the matter has to be referred to the Investors Grievance Cell of BSE.

6. The complainant purchased shares from 23.01.2008 to 05.04.2011 by paying Rs. 17,51,000/- on different dates in the span of about two and half years through the petitioner company. During the said period, the complainant also sold shares worth Rs. 9,84,811.95 and received all payment through A/c payee cheque on different dates during the aforesaid period. The full and final payment of Rs. 23,614.72/- on 23.05.2011, Rs. 1192/- on 10.10.2011 was made to him by the Company. The net purchased shares were transferred to his demat account no. 18141084 of Stock Holding Corporation of India on

19.05.2011 at his request. The value of the share at the time of transfer was Rs. 7,00,509/-.

7. Learned counsel placed reliance on statement of accounts having details of debit and credit, annexed as Annexure-5 to this application to show that a sum of Rs. 984811.95/- was debited and a sum of Rs. 1,751,000/- was credited in the account of the complainant during the aforesaid period of two and half years. Referring to Annexure-6, learned counsel submits that the complainant, during the aforesaid period, purchased share of worth Rs. 7 lacs an odd, hence, he submits that the complainant, in abuse of the process of Court, has filed the present complaint by giving it colour of criminal nature, whereas the present case arises out of share transactions which gives rise to a civil dispute having arbitration clause as per the tripartite agreement.

8. Learned counsel relied upon a judgment of Gujarat High Court, which is of similar nature, in which the present petitioner itself was the petitioner. The case also pertains to a criminal complaint arising out of the share transaction. In the aforesaid case, the Gujarat High Court, after examining all the materials on record and the tripartite agreement, has come to the finding that clause of agreement between the parties, the award

of the arbitrator and the transaction involved give rise to dispute of civil nature and has accordingly, quashed the criminal case, arising out of the criminal complaint.

9. Despite service of notice and paper publication, no body has appeared on behalf of opposite party no. 2.

10. Upon perusal of the statement made in the complaint and the tripartite agreement as well as statements of account showing the transactions of shares through the petitioner's company, this Court comes to the conclusion that petitioner, in abuse of the process of Court, has lodged the criminal complaint instead of taking recourse to arbitration, as per the arbitration agreement, provided in the Member Client Agreement entered into between the stock broker, sub-broker and the complainant.

11. This Court is of the opinion that a dispute of civil nature has been converted into a criminal case in order to pressurize and harass the petitioner. Learned Magistrate, without application of mind and in a mechanical manner, has taken cognizance under Section 418 of the Indian Penal Code. In ***(Mehmood Ul Rehman v. Khazir Mohammad Tunda & others)***, reported in ***(2015) 12 SCC 420***, Supreme Court has held that Magistrate must not issue process in a mechanical manner or as a matter of course. Though no formal or speaking

or reasoned orders are required at the stage of Sections 190/204 Cr.P.C., there must be sufficient indication in the order that the Magistrate is satisfied that : (i) the facts alleged in the complaint constitute an offence and (ii) these facts when considered along with statements recorded under Section 200 Cr.P.C. and the result of inquiry or report of investigation under Section 202 Cr.P.C., if any, prima facie make the accused answerable before the criminal court. In absence of any such indication in the order, the High Court under Section 482 Cr.P.C. is bound to invoke its inherent power in order to prevent abuse of power of criminal court. In the present case, there is no indication in the order of learned Magistrate regarding application of judicial mind at the time of taking cognizance and issuance of process to accused.

12. Accordingly, in order to prevent abuse of process of Court and to secure the ends of justice, the order taking cognizance and issuance of process is quashed.

13. The present petition is allowed.

(Anil Kumar Sinha, J)

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