

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37928 of 2016

Arising Out of PS. Case No.-946 Year-2015 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

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1. Raj Kumar Gupta, son of Singeshwar Prasad
 2. Sarswati Devi, wife of Sonlel Gupta.
 3. Sonlal Gupta, son of Singeshwar Prasad
 4. Vinod @ Vinod Gupta, son of Solelal Gupta.
 5. Rachan Kumari, Daughter of Solelal Gupta

All resident of House No. D-39, Bhagwati Vihar, Uttam Nagar, P.S Bindpur,
New Delhi.

... .. Petitioner/s

Versus

1. State of Bihar
2. Ramje Sah, son of Late Bhagwari Sah, resident of Village- Jamunapur, P.S
Laukariya Patkhauri, District West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Amit Narayan, Adv., Mr. Abhigyan Kumar, Adv., Mr. Ashwani Kumar, Adv., Mr. Brajesh Sahay, Adv.
For the State	:	Mr. Sunil Kumar Pandey, A.P.P,
For O.P. No. 2	:	Mr. Bimlesh Kumar Pandey, Adv. Mr. Vikash Kumar Shukla, Adv.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 05-09-2024

This is an application under Section 482 of the Cr.P.C.,
praying for quashing of the order dated 7th April, 2016, passed by
the learned A.C.J.M.-II, Bagaha, West Champaran in Complaint
Case No. 946 of 2015, T.R. No. 1956 of 2016, whereby and



whereunder the learned Magistrate took cognizance of the offence under Section 417 of the Cr.P.C.

2. The petitioners are the accused persons.

3. In the instant application, it is contended on behalf of the petitioners that the learned Magistrate did not take recourse to mandatory provision under Section 202 of the Cr.P.C. by causing inquiry himself or investigation by the Police, under the provision of Section 202 of the Cr.P.C., prior to taking cognizance of offence against the petitioners.

4. In order to substantiate his contention, it is submitted by the learned Advocate for the petitioners that the petitioners reside in Delhi. It is held by the Hon'ble Supreme Court in catena of decision that where the accused persons reside outside the jurisdiction of the learned Magistrate, it is incumbent duty of the Magistrate to enquire a case under Section 202 of the Cr.P.C., before issuance of process under Section 204 of the Cr.P.C.

5. In support of his contention, learned counsel for the petitioners refers to an unreported decision of the Hon'ble Supreme Court, in the case of ***Odi Jerang Vrs. Nabajyoti Baruah & Ors. (Special Leave to Appeal (Crl.) No(s). 2135 of 2022)***, decided on 22nd August, 2023. In paragraph-4 of the said Judgment, it is held by the Hon'ble Supreme Court, placing



reliance of its previous decision in the case of ***Vijay Dhanuka and Others Vrs. Najima Mamtaj***, reported in ***2014 (14) SCC 638***, there cannot be any doubt that in view of the use of word “shall” in Sub-section 1 of Section 202 of the Cr.P.C. and the object of amendment made by the Act No. 25 of 2005, the provision will have to be held as mandatory in a case where the accused is residing at a place outside the jurisdiction of the learned Magistrate.

6. The Hon’ble Supreme Court also refers to the case of ***Vijay Dhanuka (supra)*** and observed that where the learned Magistrate before issuing the summons had examined the complainant and other witnesses on oath, there was substantial compliance of Sub-section 1 of Section 202 of the Cr.P.C. Same principle was reiterated by the Apex Court in the case of ***Abhijit Pawar Vrs. Hemant Madhukar Nimbalkar and Another***, reported in ***ALR. 2017 SC 299***. In this report, the Hon’ble Supreme Court relied on its previous decision in ***Mehmood Ul Rahman Vrs. Khazir Mohammad Tundra***, reported in ***(2016) 1 SCC (Cri) 124***. It is apposite to record paragraph-20 and 22 of the ***Mehmood Ul Rahman (supra)*** hereinbelow as quoted by the Supreme Court in ***Abhijit Pawar (supra)***:-

“20. The extensive reference to the case law would clearly show that



cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749: 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.

22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure



requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”

7. On factual score, it is submitted by the learned Advocate for the petitioners that the complainant stated in his



complaint that the accused persons are his relatives. However, he did not express, either in the petition of complaint or in his evidence on solemn affirmation clearly the relationship between him and the accused persons.

8. It is contended on behalf of the petitioners that they never came to the village of the complainant as alleged. The case of the complainant is that on being asked by accused no. 1, he paid a sum of Rs. 2,00,000/- (two lakhs) to accused no. 1. The accused no. 1 promised him to repay the said amount within two months. However, it has not been paid.

9. It is submitted by the learned Advocate on behalf of the petitioners that the allegation of payment of money and non-payment of the said sum to the payer by the payee, does not in all cases amount to the offence of cheating. In order to establish an offence of cheating, the complainant requires to prove at the first stage intentional deception of any person (a) Inducing him (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property, or (b) intentionally inducing that person 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 cause or likely to cause damage or harm to that person.



10. It is submitted by the learned Advocate on behalf of the petitioners that even assuming that the complainant paid certain amount of money to the accused no. 1, this does not mean that the accused no. 1 demanded the said money in order to fraudulently or dishonestly deceive the complainant to deliver the said money.

11. It is rightly contended by the learned counsel for the petitioners that to bring home a charge under Section 417 of the Cr.P.C., the complainant is required to prove that the petitioner no. 1 had the intention or mens rea to commit cheating from the very beginning when he demanded money from the complainant.

12. The case of the complainant, on the other hand, is that sometimes in the month of May, 2015, the accused no. 1 along with others, came to his house and demanded the money on promise that he would repay the said amount within two months. Therefore, when the money was allegedly paid, there was no intention of the petitioner that he would not repay the said money. Thus, the basic ingredient of offence under Section 415 of the Cr.P.C. is absent in the instant case.

13. In order to substantiate his contention, the learned Advocate on behalf of the petitioners refers to the following decisions:-



(1) ***Suresh Vrs. Mahadevappa Shivappa
Danannavaand Another***, reported in ***AIR 2005 SC 1047***.

(2) ***Hira Lal Hari Lal Bhagwati Vrs. C.B.I., New Delhi***,
reported in ***AIR 2003 SC 2545***.

14. The petitioners also filed a supplementary affidavit pointing out certain contradictions between the complaint and the evidence on solemn affirmation by the complainant and two other witnesses.

15. The learned Advocate on behalf of the opposite party no. 2/complainant submits that the petitioners lodge a complaint and in support of the case made out by them in the complaint, they examined himself and two other witnesses. They corroborated the statement of the complainant as well as the case made out in the complaint. On the basis of the said evidence, the learned Magistrate took cognizance of offence under Section 417 of the Cr.P.C. At this stage, the petitioners cannot pray for quashing of the complaint without facing trial.

16. Having heard the learned counsels for the parties and on perusal of the entire materials on record, this Court at the outset refers to the provision of Section 482 of the Cr.P.C. which runs:-

“482. Saving of inherent powers of High Court.

- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court



to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

17. Plain reading of Section 482 of the Cr.P.C. goes to suggest that the High Court has inherent power to pass any order:-

(i) As may be necessary to give effect to any order under this Court.

(ii) To prevent abuse of the process of any Court.

(iii) Otherwise to secure the ends of justice.

18. The Hon'ble Supreme Court in the case of ***State of Haryana Vrs. Ch. Bhajan Lal & Others***, reported in AIR 1992 SC 604, succinctly laid down the ground where a criminal proceeding can be quashed. The grounds are as follows:-

“108. 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 information 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 any 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 person 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.”

19. In the instant case, allegation against the petitioners is that the petitioners came to the house of the de-facto complainant and requested him to pay a sum of Rs. 2,00,000/- (two lakhs), which the petitioner no.1 was in need for the purpose of his business. Subsequently, at least on three occasions, the informant demanded the said money, but petitioner no. 1 finally refused to pay the same. The issue as to whether a person has criminal intention of cheating from the very beginning of delivery of the property in favour of him or not can only be determined on number of circumstances, which may be revealed during the trial on the basis of evidence. At this stage, it is not possible to say as to



whether the petitioner no. 1 had the mens rea to commit offence of cheating upon the complainant.

20. Moreover, the contradictions refer to by the learned Advocate on behalf of the petitioners may hold good during trial. Contradictions in evidence of a particular witness from his previous statement enables the Court to come to a decision as to whether the evidence of the witness is trustworthy or not. At the stage of quashing of a proceeding immediately after taking cognizance of offence, this Court cannot come to such finding which means pre-judging the case before trial.

21. Now, let me consider as to whether the provision of Section 202 of the Cr.P.C. was applicable or not. Relying on *Vijay Dhanuka (supra)*, this Court finds that before issuing summons the learned Magistrate had examined the complainant and two other witnesses on solemn affirmation and therefore, on facts, a substantial compliance of Sub-Section 1 of Section 202 of the Cr.P.C. was made.

22. For the reasons stated above, at this stage, I am not in a position to accept the submission made by the learned Advocate for the petitioners.

23. At the same time, I find that the complainant failed to produce any evidence against petitioner nos. 2 to 5. Therefore,



criminal proceeding being Complaint Case No. 946 of 2015 be quashed against petitioner nos. 2 to 5.

24. The case shall continue against the petitioner no.1 namely Raj Kumar Gupta only.

25. With the above order, the instant Cr. Misc. is disposed of on contest.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

