

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41462 of 2023

Arising Out of PS. Case No.-595 Year-2019 Thana- SAMASTIPUR MUFFASIL District-
Samastipur

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1. RAVI KUMAR SINHA @ RAVI SINHA S/O KUSHESHWAR PRASAD SINHA R/O Ashok Nagar, Pokhriya, Begusarai, P.S- Town Begusarai, Bihar- 851101.
 2. Shashi Kant Kumar Singh @ Shashi Kumar S/O Nawal Kishor Singh R/O Bhilwara Roopnath, Muzaffarpur, Saraiya, P.S- Saraiya, Bihar-844111
 3. Akhilesh Kumar Choudhary @ Akhilesh Kumar S/O Nawal Kishor Choudhary R/O Near Primary School, Khajautiya Ram Tola, Khajautiya, Samastipur, P.S- Ghataho Dayal Chowk, Bihar- 848114
 4. Manit Kumar Gautam @ Manit Kumar S/O Awdhesh Kumar Singh R/O Samsa, Shamsa, Begusarai, P.S- Mansoorchak, Bihar- 851128
 5. Nigam Kumar S/O Ashok Kunwar R/O Shamsa, Begusarai, P.S- Mansurchak, Bihar- 851128
 6. Dev Prakash @ Dev Kumar S/O Madan Mohan Singh R/O Near Middle School Hariharapur, Shankarz, Rakbe Urf, Rajauli, Vaishali, Hajipur, P.S- Sadar Thana, Bihar- 844102
 7. Amit Vikash Sharma @ Amit Kumar S/O Purushottam Prasad R/O Kasturi, Vidhya Kunj, Chahuhatta, Hajipur, Vaishali, P.S- Town Thana, Bihar- 844101

... .. Petitioner/s

Versus

1. State of Bihar
2. Ravinandan Pandey S/O Dinesh Pandey R/O Village- Dadhiya, Asadhar, P.S- Angarghat, Samastipur, Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dayanand Singh
For the Opposite Party/s : Mr.Chandra Sen Prasad Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 10-09-2024 Heard learned counsel for the parties.

2. The present application has been filed for quashing the order dated 28.07.2021 by which learned Additional Chief Judicial Magistrate-II, Samastipur has taken



cognizance against the petitioners in connection with Samastipur Mufassil P.S. Case No. 595/2019 (G.R. No. 3103/2019), registered under Sections 406, 420, 458, 467, 471, 120B of the Indian Penal Code.

3. As per the prosecution case, accused persons had purchased a Swift Dzire car from the Atul Auto Motors Company situated at Mohanpur Road, P.S. Samastipur where they had paid Rs. 1,42,000/- as down payment and a approval letter dated 04.03.2019 was issued in favour of the company of the Cholanmandalam Investment and Finance Company Ltd. but even after issuance of Form 34, the payment was not made to the complainant. Then complainant filed a complaint petition and in light of the order of learned Court, Samastipur Mufassil P.S. Case No. 595/2019 was lodged against the accused persons. It is further alleged that after completion of investigation the police submitted charge-sheet against all the petitioners under Sections 406, 420, 458 467, 471, 120B of the Indian Penal Code vide Police report No. 237/2021. The learned court below has taken cognizance against all the petitioners u/ss 406, 420, 458, 467, 471, 120B of the Indian Penal Code.

4. It has been submitted by the learned counsel for the petitioner that the impugned order dated 28.07.2021 is



passed in mechanical manner and the learned Chief Judicial Magistrate concerned has passed the impugned order without applying his judicial mind and it is not based on the materials available on record.

5. It has further been submitted by the learned counsel for the petitioner that it is settled position of law that the Magistrate cannot trust the prosecution story blindly and the cognizance order must reflect the application of mind and appreciation of materials on record. From the plain reading of the FIR and the charge-sheet and the impugned order, it is clear that there is absolutely not even a whisper of allegations against any of the petitioners in their personal capacity and as such in the absence of such allegations the impugned order is bad in law. No material has been collected by the Police in the entire investigation to connect any of the petitioners with any offence. It has further been submitted by the learned counsel for the petitioner that the entire dispute relates to business relations between the Cholamandalam Investment and Finance Ltd. and the company run by the Complainant. However, neither complainant has added the Company as a party nor the learned court below has given any finding in this regard, therefore in absence of the company as accused, none of the employees can



be held vicariously liable as held by Hon'ble Supreme Court in the case of ***R Kalyani vs Janak C Mehta and Ors., (2009) 1 SCC 526 and Sharon Michael and Ors. Vs State of Tamil Nadu and Ors., (2009) 3 SCC 375.***

6. It is further submitted that the learned court below has failed to apply its judicial mind and has passed the order impugned in a mechanical and routine manner which is evident from the perusal of the impugned order which appears to be proforma based order wherein even the name of the accused persons have not been recorded and such order is not tenable in eyes of law as held by Allahabad High Court in the case of ***Ankit vs State of U.P. and Ors., MANU/UP/2861/2009.***

7. It has further been submitted by the learned counsel for the petitioners that the Company is engaged in the business of finance inter alia vehicle finance across the country and as a normal course of its business the company has an arrangement with dealers/sellers of vehicle for finance facility to the customers approaching such dealers for purchasing the vehicle. The accused no. 1, namely Anil Mukhiya approached the Complainant for purchase of a vehicle of make and mode Swift Dzire at Rs. 5,78,500/- wherein the company sanctioned loan of Rs. 4,27,035/- in favour of the customer. However, prior



to disbursal of the loan, the customer approached the company and made request for cancellation of the loan on the pretext that he does not want to obtain any loan and on such request made by the customer, the Company cancelled the loan.

8. It is further submitted by the learned counsel for the petitioners that the Company is well within its right to cancel the loan upon request of such prospective borrower and no criminal case is made out for such business/ policy decision. He also submits that the petitioner no. 1 was employed at the post of Branch Manager at Samastipur and he had no connection with the instant case as it relates to Dalsinh sarai Branch, petitioner no. 2 was employed as Branch Sales Manager, petitioner no. 3 was employed as Branch Business Manager, petitioner no. 4 was employed as Sales Field Manager, petitioner no. 5 was employed as Sales Field Manager, petitioner no. 6 was employed as Sales Manager at Hajipur branch, petitioner no. 7 was employed as Area Business Manager and they had no role to play in the alleged offence as the petitioners have to play the administrative role and they did not have any direct role in disbursal or rejection.

9. It is submitted that the petitioners were holding different posts whereupon different job responsibilities were



given including sourcing of loan, document verification and other formalities. However, none of the petitioners had sole responsibility to sanction or disburse loan which is done only on the basis of sanction and approval.

10. It has been submitted by the learned counsel for the petitioners that from the plain reading of the complaint, it is clear that the instant F.I.R. was falsely registered by the complainant to put undue pressure on the company for settlement of claim.

11. The Hon'ble Supreme Court has categorically held that such practice of falsely entangling a person in criminal prosecution for putting pressure should be discouraged. The Hon'ble Supreme Court in the case of ***Usha Chakraborty and Anr., 2023 SCC Online SC 90*** reiterated the trite principle of law and held that *"The factual position that would reveal the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature. The appellants and the respondents have given a cloak of criminal offence in the issue. In such circumstance when the respondent had already resorted to the available civil remedy and it is pending, going by the decision in Paramjit Batra (supra), the High Court would have quashed*



the criminal proceedings to prevent the abuse of the process of Court but for the concealment.”

12. In the case of ***M/S. Pepsi Foods Ltd. & Anr vs Special Judicial Magistrate & Ors., AIR 1998 SC 128***, the Hon'ble Supreme Court has held that summons issued must reflect the application of mind and they cannot be in a mechanical manner.

13. From perusal of the F.I.R., it is clear that the dispute arises out of a business relation and as such no individual liability can be fastened against the petitioners who are employees of the Company. The entire dispute is of civil nature and there is not even a whisper of allegations against the petitioners.

14. The Hon'ble Supreme Court with a case of similar nature in the case of ***Sharon Michael and Ors. vs. State of Tamil Nadu and Ors., (2009) 3 SCC 375*** held that “11. *The First Information Report contains details of the terms of contract entered into by and between the parties as also the mode and manner in which they were implemented. Allegations have been made against the appellants in relation to execution of the contract.*

No case of criminal misconduct on their part has been made out before the



formation of the contract. There is nothing to show that the appellants herein who hold different positions in the appellant-company made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they are employees of the company.

15. Learned counsel for the petitioner further submits that from the entire complaint, charge-sheet and impugned order, it is clear that there is no allegation against the petitioners in their individual capacity and if the entire allegations are assumed to be true, no criminal offence is made out against the petitioners.

16. Learned counsel for the petitioners has also relied upon the judgment of the Hon'ble Supreme Court passed in the case of ***State of Haryana and Ors., vs. Ch. Bhajan Lal and Ors., AIR 1992 SC 604***, in which the Hon'ble Supreme Court has held that inherent power under Section 482 of Cr.P.C. could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice and cases wherein the criminal proceeding is manifestly attended with mala fide and 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



and the same principal is squarely applicable in the instant case and thus impugned order may be quashed.

17. Learned counsel for the opposite party no. 2 has opposed this case and has submitted that from the allegations levelled against the petitioners, criminal offence is made out.

18. Learned APP has also opposed the quashing application and has supported the stand of the opposite party no. 2.

19. I have considered the submissions of the parties. The gist of the accusations against the petitioners is that initially they had sanctioned the loan to the accused no. 1, Anil Mukhiya but subsequently on the request of the Anil Mukhiya, they cancelled the loan and the loan amount was not disbursed to the opposite party no. 2 but the version of the complainant is that after the sanction, the loan cancellation was never informed to him and he had given possession of the Maruti Swift vehicle on an understanding that as the loan amount was sanctioned by the petitioners, the petitioners will pay the loan amount to the informant but subsequently due to cancellation of loan, the informant is not being able to recover the price of the vehicle from the accused no. 1, Anil Mukhiya.

20. So far as the petitioners are concerned, they are



employees of the Cholamandalam Finance Ltd., and they have been made accused without making the company an accused in this case.

21. From the reading of the F.I.R., it appears to be a civil dispute and no criminal offence is made out against the petitioners.

22. In view of the law laid down by the Hon'ble Supreme Court in the case of *State of Haryana vs. Bhajan Lal (1992) Supp (1) SCC 335*, I am of the view that this F.I.R. against the petitioners will not continue but this doesn't mean that the F.I.R. as against accused no. 1, Anil Mukhiya cannot continue because his case is different from the case of the petitioners.

23. In view of the discussions made above, I am of the view that no offence have been committed by the petitioners who are employees of the Cholamandalam Finance Ltd. and therefore the prosecution of the petitioners cannot continue.

24. Accordingly, this application is allowed and the order dated 28.07.2021 by which cognizance has been taken against the petitioners in connection with Samastipur Mufassil P.S. Case No. 595/2019 (G.R. No. 3103/2019) are hereby quashed as against the petitioners.



25. The prosecution of co-accused Anil Mukhiya will continue.

26. The informant can initiate appropriate proceeding in an appropriate forum/court for recovery of balance price of vehicle in question from the accused no. 1, Anil Mukhiya.

27. If any application for attachment of vehicle in question is filed before the District Court by the informant, the same shall be considered by the District Court within one month of its filing.

(Sandeep Kumar, J)

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