IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48000 of 2023

Arising Out of PS. Case No.-136 Year-2023 Thana- BYPASS District- Patna

==

DHARAM KUMAR @ DHARM KUMAR @ DHARMAY KUMAR son of Lalu Rai R/o- Near Chhoti Pahari Sheetala Mandir Loha Factory Ps- Bypass Dist- patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Manvendra Singh son of Dinesh Singh R/o- 645A,1252, Janki Puram, P.S.- Jankipuram, Dist- Lucknow U.P. and presently reside at Kurji, Patna, P.S.- Digha, Bihar- 801105

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s	:	Mr.Aryan Sinha, Adv
For the State	:	Mr.Vinod Shanker Modi, APP
For the OP No. 2	:	Mr. N.K. Agrawal, Sr. Adv
		Mr. Jayant Rai chaudhary, Adv
		Mr. Binay Kumar, Adv

==

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

10 04-03-2024 **1.** Heard learned counsel for the petitioner, learned A.P.P. for the State along with learned Senior counsel for the OP No. 2, Mr. N.K. Agrawal, assisted by Mr. Jayant Rai Chaudhary and Mr. Binay Kumar.

2. The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 406, 409, 420, and 120B of the Indian Penal Code.

3. The learned counsel for the petitioner, at the outset, submits that a purely civil dispute has been given a criminal colour. It is also submitted that even presuming what has been alleged is true without admitting then at best it is a breach of agreement, which was entered in between the petitioner and the OP No. 2. it is next submitted that OP No. 2 is a public limited company and has presence pan India and thus has a legal team to look after the dispute, which arises in between the company and persons, like the petitioner, and for every breach of agreement, criminal proceedings should not be resorted to recover monetary dues.

4. The submissions made by the learned counsel for the petitioner is not without merit rather in the nature of allegation, it appears that a company like Hindustan Unilever Limited ought not to have resorted to a criminal proceeding for recovering money dues in relation to a dispute relating to business.

5. At this stage the learned counsel for the petitioner submits that the Hon'ble Supreme Court in catena of decision has held that criminal prosecution should not be resorted to for recovering money dues and the Criminal Courts should not be used as a tool for recovery. It is next submitted that since the courts adopt a lenient view, as such, people resort to criminal proceedings for recovering money dues thinking that at best the case of the accused would be allowed, but then no criminal action would be initiated against the person, who had instituted the case. It is further submitted that if company, like Hindustan Unilever Limited, is resorting to criminal proceedings for recovering money dues that amply demonstrates that no businessman is safe as they cannot stand against the might of a company, which has presence pan India. It is also submitted that since the dispute is purely civil to which a criminal color has been given as such the court should direct the concerned SSP to register an FIR against the company with a direction to investigate as to whether such civil dispute be instituted giving it a colour of criminality. It is next submitted that the petitioner is proprietor of Maa Ambey Traders and is Redistribution Stockist of the informant-company, i.e., Hindustan Unilever limited and requested the company to deliver the goods to its firm and assured that he will make the payment of the consignment in time, thereafter on petitioner's request, the company delivered the goods with tax invoices dated 28-2-2023, 1-3-2023, 2-3-2023, 3-3-2023, 4-3-2023 and 6-3-2023 valued at Rs. 16,71,296/-, Rs. 14,80,749/- Rs. 13,10,282/- Rs. 11,57,291/-, Rs. 16,17,243/- and Rs. 21,43,970/- respectively, thereafter the petitioner received the said goods delivered by the company in between 28-2-2023 and 6-3-2023, thereafter the informant presented the cheque before the authorized bank for encashment, but the cheque on presentation for encashment bounced, further the petitioner was informed about the dishonor of the cheque and was asked to pay the amount, thereafter the petitioner sent an email dated 6-3-2023 to the informant, informing that he is not willing to continue as a Redistribution Stockist of the company, thereafter the criminal case came to be instituted.

6. The learned counsel next submits that the cheque, which was dishonored, was an electronic cheque, as such, for dishonor of such cheques, a case under Section 138 NI Act is not instituted rather the same is adjudicated in terms of Payment of Settlement Act, 2007. It is further submitted that if what has been alleged in the complaint case is true, in that event, the dispute was purely civil, as the informant is claiming that certain goods which were sent to the petitioner, the payment of the same was not made and thus the electronic cheques were presented for encashment which bounced. It is next submitted that the company has already instituted a case at Mumbai under the payment of Settlement Act 2007 with regard to bouncing of the electronic cheque. It is thus submitted that petitioner will appear and contest and will put his claim that it is the company which owes money to the petitioner and it is not the petitioner who owes money to the company, but then the present criminal case is nothing but an abuse of the process of the court.

7. At this juncture, the learned counsel for the petitioner submits that what the company is doing is that on the one hand, the company is pursuing its remedy in accordance with law in terms of the Payment Of Settlement Act 2007, and on the other hand, is resorting to criminal proceedings for coercing the petitioner into submission so that he parts with the money, as such, the company does not want an adjudication of the claim on merits at Mumbai, as the petitioner would be in a position to demonstrate before the adjudicating authorities that the company ought not to have presented the electronic cheque for encashment as it was company which owed the amount to the petitioner, which could have been adjusted against the goods received.

8. The learned counsel for the petitioner, at this stage, further submits that in the event if the adjudicating authority under the Payment of Settlement Act 2007, after hearing the petitioner and the OP No. 2, comes to a conclusion that petitioner does not owe any money to the company and the electronic cheques ought not to have been presented, in that event what happens to the present criminal case, it is thus submitted at the cost of repetition that the present criminal case has been instituted only with a view to coerce the petitioner into submission so that the petitioner is not in a position to approach the adjudicating authority at Mumbai for putting forth his claims.

9. The learned APP along with learned senior counsel for the OP No. 2 vehemently opposes the anticipatory bail application of the petitioner, but are not in a position to rebut the submission of the learned counsel for the petitioner that in the event if the adjudicating authority under the Payment of Settlement Act 2007 comes to a conclusion that petitioner does not owe anything to the company, in that event what happens to the present criminal case.

10. Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, in the event of his arrest or surrender before the learned trial court within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 5,000/- (Rupees Five Thousand) with two sureties of the like amount each to the satisfaction of the learned trial court where the case is pending/successor court in connection with Bypass P.S. Case

No. 136 of 2023 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

SUMIT/-

U		T	