

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25279 of 2016

Arising Out of PS. Case No.-2276 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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1. IL and FS Infrastructure Development Corporation Ltd. (now Known As IIDC Ltd.) 4-B, Ist Floor, Sri Krishna Puri, P.S.- Krishna Puri, District- Patna through employee Shri Uma Shanker Dubey, S/o Sri B.N. Dubey, R/o 4/B S. K. Puri, P.S.- S.K. Puri, District- Patna, the power of attorney holder.

2. Paritosh Gupta S/o Ram Das Gupta, R/o Commonwealth, Village Near Akshar Dham Temple, P.W.- Mandavali, Delhi, M.D., IL and FS Infrastructure Development Corporation Ltd. (now Known As IIDC Ltd.) 4-B, Ist Floor, Sri Krishna Puri, P.S.- Krishna Puri, District- Patna-1.

... .. Petitioner/s

Versus

1. State Of Bihar.

2. Transys Consulting Private Limited through its Director Mr. Sanjeev Singh S/o Sri Satish Prasad Singh, R/o Sona Tower, NM-8, Old DLF Market, Sector-14, P.S.-Gurgaon, District- Gurgaon.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 26440 of 2016

Arising Out of PS. Case No.-2276 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Hirendra Nath Jha S/o Sri Vedanand Jha, Resident of D/33, Jagat Amrawati Apartment, P.S.- S.K. Puri, District- Patna.

2. M. Sai Hareesh S/o M. Surya Narayana, Resident of D/33 Jagat Amrawati Apartment, P.S.- S.K. Puri, District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar.

2. Transys Consulting Private Limited through its Director Mr. Sanjeev Singh S/o Sri Satish Prasad Singh, R/o Sona Tower, NM-8, Old DLF Market, Sector-14, P.S.-Gurgaon, District- Gurgaon.

... .. Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 25279 of 2016)

For the Petitioner/s : Mr.Surendra Kishore Thakur, Advocate

Ms. Y. Madhavi, Advocate

For the State : Mr. Upendra Kumar, APP

For the O.P. No.2 : Mr. Saket Tiwary, Advocate

Mr. Saket Gupta, Advocate



Mr. Animesh Gupta, Advocate
(In CRIMINAL MISCELLANEOUS No. 26440 of 2016)
For the Petitioner/s : Mr. Surendra Kishore Thakur, Advocate
Ms. Y. Madhavi, Advocate
For the State : Mr. Upendra Kumar, APP
For the O.P. No.2 : Mr. Saket Tiwary, Advocate
Mr. Saket Gupta, Advocate
Mr. Animesh Gupta, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

17 06-08-2024 Both the petitions are taken up together as they have been preferred by the petitioners against the same impugned order dated 13.07.2015 passed by Ld. Judicial Magistrate-Ist Class, Patna, in Complaint Case No. 2276(C) of 2015 whereby Ld. Magistrate has taken cognizance for the offences punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code against all the four petitioners, namely, IL and FS Infrastructure Development Corporation Ltd., Paritosh Gupta, H. N. Jha and M.S. Harsh and issued summons against them.

2. The complaint was filed by the company (O.P. No.2) through its Director Sanjeev Kumar Singh. Before cognizance was taken, the representative of the complainant company, Shri Sanjeev Kumar Singh, who was Director of the Company, was examined under Section 200 of the Cr.PC. As per his statement during the inquiry, the prosecution case is that the occurrence had taken place in May, 2015. The complainant company works as a road consultant. It prepares design and estimate for road and bridge. In the year 2009, the complainant



company had taken work of 500 Km. Road coming under PMGSY for preparation of design and detailed project report. The road was to be constructed in East Champaran and Buxar. After completion, the work was handed over to the accused company. The work was done under an agreement which has been filed along with the complaint. The agreement was for 500 Km road. But after verification, the complainant company came to know that the work given by the Accused Company was of 668 Km road. Thereafter the complainant company informed the accused company that they have actually done work of 668 Km. The accused company responded that it should keep working. 168 kilometer would be adjusted.

3. Thereafter, the complainant company submitted the DPR for 668 Km. which was sent by the accused company to Delhi for approval. The approval was to be done by Central Government but Central Government gave approval only for 112 Km. This was informed in 2013-2014 by the accused company that only 112 Km. has been approved. Thereafter the complainant company asked what would happen to the work done for 668 Km. But, no satisfactory reply came from the accused company. It is further alleged that the aforesaid work was done through Bihar Government. But after approval, the



complainant company came to know that the aforesaid road was not in the list of Central Government. The complainant company had done work as per the letter of the accused company and it was not aware whether the road was in the list of the Central Government or not. As per further statement, there was agreement between the complainant company and the accused company in regard to DPR that the work will be done at the rate of Rs.17,000/- (Rupees seventeen thousand only) per km. Accordingly, as per calculation, the complainant company is entitled to receive payment of Rs.1,13,00,000/- (Rupees one crore thirteen lacs only). However, only Rs.28,76,000/- was received from the accused company. Rs.98,86,000/- (Rupees ninety eight lac eighty six thousand only) is outstanding against the accused company, but the same was not paid despite demand. Notice was given. In reply to the notice, the accused company stated that only 112 Km has been approved and it would make payment accordingly. Regarding the rest work, it was stated that it would see in future to make payment if something happens.

4. To court question, the complainant has stated that between the year 2009 and 2014, payment of Rs.28,00,000/- (Rupees twenty eight lacs only) was made to the complainant



company. The arrears has not been paid. In the name of the payment of the arrears, an another project of Madhepura-Saharsa of 500 Km has been given and this work was also done by the complainant company. But Rs. 1,25,00,000/-(Rupees one crore twenty five lacs only) is still outstanding in that regard.

5. As per further statement, The complainant approached the Patna Police. But the Police stated that it is a contract matter, and hence it should move the Court.

6. It has been further stated that the agreement between the parties has been annexed as Annexure-1. The invoice has been annexed as Annexure-2. The copy of the invoice and the reminder have also been filed. The accused company has cheated the complainant company. The accused company is not making payment despite demand. The complainant company made last demand on 4.11.2014, but the payment has not been made to the Company by the accused. In May, 2015, the complainant company had visited Patna office of accused company at S.K. Puri, Patna, but they refused to pay money. Prior to visiting Patna Office of the accused company, he had also visited Delhi Office of the accused company and met Managing Director of the Company. But they did not make the payment. Hence, the complainant company has been



cheated.

7. Heard learned counsel for the Petitioners and learned APP for the State as well as learned counsel for the Opposite Party No.2, complainant company.

8. Learned counsel for the petitioners submits that the work has been done by the complainant company as per the contract dated 10.7.2009 as per which learned counsel for the Petitioners submits that as per the agreement, total payment is required to be calculated on the basis of the length of the road which would be approved by NRRDA (National Rural Road Development Authority) of the Central Government @ Rs.17,000/- per Km and as per the approval, only 112 Km has been approved by NRRDA and payment for this work has been admittedly made. Hence, there is no question of commission of any offence.

9. He has further submitted that at most, the alleged facts and circumstances constitute a dispute of civil nature and there is already arbitration clause in the contract dated 10.7.2009 (Clause 10.2 and 10.3). If the complainant company is of the view that he is entitled to more than Rs. 28,76,000/- (twenty eight lacs seventy six thousand only). It is at liberty to invoke to the arbitration clause.



10. *Per contra*, learned counsel for the complainant company submits that the complainant company was entitled to get payment as per the road length of the DPR and it had nothing to do with approval by NRRDA. The complainant company had worked under the direction of the accused company. He also refers to Appendix 5 of the contract which provides for terms of payment which stipulates payment to the complainant company at different stages. As per direction of the accused company, the complainant company had prepared DPR of 668 Km road for which it is entitled to receive payment of Rs.1,13,00,000/-(Rupees one crore thirteen lacs only), out of which only Rs. 28,76,000/- (Rupees twenty eight lacs seventy six thousand only) has been received from the accused company and Rs. 98,68,324.83/- (Rupees ninety eight lacs sixty eight thousand three hundred twenty four and eighty three paise) is still outstanding. But the same is not being paid despite several demands, which shows that the accused company had *mens rea* right from the beginning not to make payment despite taking work from the complainant company.

11. Perused the material on record and considered the submissions advanced on behalf of the parties.

12. Admittedly the work has been done by the



complainant company under the contract dated 10.07.2009 entered into with the accused company. There is no dispute regarding rate of payment @ Rs.17,000/- per kilometer of road. However, after perusal of the contract, I find that Appendix-IV, which deals with fee schedule clearly provides that total contract value would be worked out on the basis of length in kilometer of the road sections which shall be approved by IIDC after submission of the inception report by the consultant. The note to the fee schedule clarifies that exact length of the road sections may not be available at initial stages. The adjustment on payment, if any, shall be made after the finalization of the road lengths at NRRDA approval and consultant i.e. complainant company shall submit the invoice against the milestone showing necessary adjustment(s), if any, towards excess payment received from IIDC mainly on account of ad hoc road lengths for which DPRs have been submitted/approved at earlier stages.

13. As such, it clearly transpires that entitlement of the complainant company to the payment is to be calculated @ Rs. 17,000/- per kilometer of the road. However, the total length of the road would be ultimately decided as per the road length of the approved DPR by NRRDA. The road length of the DPR is



only ad hoc road length to make initial payment by accused company but final payment payable by the accused company to the complainant company is to be decided as per the road length of the approved DPR. If any excess payment has been made by the accused company to the complainant company, that is required to be adjusted by the complainant company.

14. I further find that there is no dispute regarding length of the road as per the approved DPR. This road length of the approved DPR is 112 kilometer and admittedly, payment for 112 kilometer @ Rs. 17,000/- per kilometer has already been made by the accused company to the complainant company. Hence, no offence is made out as per the alleged facts and circumstances of the case.

15. As such, the impugned order is an abuse of the process of the Court and not sustainable in the eye of law and liable to be quashed and set aside under Section 482 Cr.PC.

16. In **State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC 335**, Hon'ble Supreme Court has held, amongst other things, that if no prima facie case is made out as per the alleged facts and circumstances of the case, the inherent power under Section 482 Cr.P.C. may be invoked to prevent the abuse of the process of the Court and secure the ends of justice.



17. Accordingly, the present petition is allowed quashing and setting aside the impugned order 13.07.2015 passed by Ld. Judicial Magistrate-Ist Class, Patna in Complaint Case No. 2276 (c) of the 2015.

18. However, the complainant company is at liberty to invoke civil remedy, if so advised, or invoke the arbitration clause as provided in the contract dated 10.07.2009.

(Jitendra Kumar, J.)

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