

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55447 of 2023

Arising Out of PS. Case No.-1439 Year-2022 Thana- COMPLAINT CASE District- Araria

1. Rakesh Kumar Mishra, S/o Paras Nath Mishra, R/o Village-Govindpur, P.S.-Pratapganj, District-Supoul.
2. Vijayanand Singh, S/o Nityanand Singh, R/o Village-Narayanpur, P.S.-Bachhwara, District-Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kartik Kumar Yadav, S/o Late Panchlal Yadav, R/o Village-Hanuman Nagar Bhangahi, P.S.-Narpatganj, District-Araria.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Dr. Kamal Deo Sharma, Advocate Mr. Tushar Vaibhav, Advocate
For the Opposite Party/s	:	Mr. Uma Shankar Prasad Singh, APP Mr. Kundan Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 14-05-2024

1. Heard learned counsel for the petitioners and learned counsel for the opposite party no.2.

2. The petitioners have filed the instant application praying for quashing the order dated 18.1.2023 passed in Complaint Case no.1439 of 2022 whereby the learned Judicial Magistrate 1st Class, Araria was pleased to take cognizance under sections 406 and 379/34 of the Indian Penal Code.

3. The prosecution case as per the complaint filed by the opposite party no.2 on 20.7.2022 in the Court of learned Chief Judicial Magistrate, Araria is to the effect that the



complainant is an educated unemployed person. Having coming in contact with the Delhivery Pvt. Company, an offer was given to the complainant to open a branch of the Company. An agreement was entered into on 26.7.2019 and the complainant started work of the Company. It is stated that after about a month of start of the work, information was given by the complainant to the accused persons on telephone that the work of the Company was not running in a smooth manner. He was facing various difficulties. Accordingly with the consent of the accused persons, the location of the branch was changed and once again the work started. It is stated that the complainant having worked tirelessly got the Company to earn profit running into crores. Though the accused persons paid the petitioners for few months, however subsequently they stopped paying him and the dues of the complainant on the accused rose to Rs.15 lacs. It is further stated by the complainant that the accused persons entered into a conspiracy and on the pretext of inspecting the branch of the complainant came there. In the absence of the complainant, it is stated that accused nos. 6 and 7 gave information to the other accused persons. They kept the local employees of the complainant in dark and got them to open the branch on the pretext of going through some



documents. The complainant states that on going to the branch on 15.10.2020, he found that the branch was open and neither any employee was present there nor any of his goods was available there. On making enquiries from the landlord, he was informed that the persons had carried away all the expensive items and had left goods worth about Rs.3 lacs with the landlord in lieu of the rent. It is further stated that on enquiry it further transpired that an application has been filed by the accused in the police station also and a case has also been registered. The complainant tried to somehow save himself from the accused but was arrested by the police personnel on 20.3.2021. The complainant further states that the accused persons had the intention to cheat the complainant from the very beginning and it was as a result of a well planned conspiracy between the accused nos. 1 to 5 on one hand and the accused nos. 6 and 7 on the other that in absence of the complainant the accused persons had gone to the branch of the complainant, opened it in a planned manner and had escaped with expensive goods belonging to the complainant including four blank cheques of Rs.2 lacs each. The complainant finally states that the accused have taken away goods worth Rs.15 lacs. Having been released on bail, it was because of illness that the complaint could not be



filed on an earlier occasion.

4. Learned counsel for the petitioners submits that on filing of the complaint, the statement of the complainant as also the statements of two witnesses was recorded on solemn affirmation in support of the complaint. It is by order dated 18.1.2023 that cognizance has been taken under sections 406 and 379/34 of the Indian Penal Code which is impugned in the instant application. Learned counsel referring to the contents of the petition further states that it was the petitioner who filed an FIR being Narpatganj P.S. Case no.441 of 2020 on 30.9.2020 under sections 406 and 420 of the Indian Penal Code against the opposite party no.2 herein. As stated in the complaint itself, the opposite party no.2 was taken into custody and the instant petition has been filed on false and frivolous allegations in retaliation thereto. Both the petitioners herein are working staff of the Company in question and they have been working in the capacity of Assistant Security Manager and Station Manager. The petitioner was one of the partners of the Company. It is submitted that on the petitioners and other authorised officers having inspected the centre of the complainant on 1.7.2020 that cash to the tune of Rs.7.5 lacs and other materials to the tune of Rs.2.68 lacs was found to be in short. On enquiry, the



complainant assured that the short amounts and goods etc would be restored. This led to filing of the above mentioned FIR in which the opposite party no.2 was taken into custody and it was only to set up a defence and to save himself that the instant complaint has been lodged with false and malicious allegations.

5. In response, learned counsel for the opposite party no.2 opposing the application has submitted that both the petitioners are not only named accused in the complaint but there is direct material against them in the complaint petition as also the statement of the witnesses recorded in course of enquiry. It is further submitted that as held by the Hon'ble Supreme Court in the case of M/s Medchl Chemicals & Pharma P. Ltd. vs. M/s Biological E. Ltd & Ors. [2000 (3) PLJR 56 (SC)] the complaint has to be examined in its entirety and the Court has no jurisdiction to examine the correctness of the complaint. On reading of the petition of complaint, *prima facie* under sections 406 and 379/34 of the Indian Penal Code is made out against the petitioners. There being no merit in the instant application, the same be dismissed.

6. Having heard learned counsel for the parties and having perused the material on record, this Court finds that so far as the contents of the complaint petition filed by the



complainant-opposite party no.2 is concerned, not only there is direct allegation against the petitioners but it has been categorically stated that the accused persons including the two petitioners herein entered into a conspiracy, got the centre of the complainant opened by the employees on the pretext of examining some documents and took away goods worth Rs.15 lacs. The complainant in his statement on S.A. has supported the allegations levelled in the complaint. Having perused the material available on record and having gone through the aforesaid judgment in the case of M/s Medchl Chemicals (*supra*), this Court finds that the complainant has made out a *prima facie* case to proceed against the petitioners under sections 406 and 379/34 of the Indian Penal Code, the petitioners have not made out any case for interference in the order taking cognizance, impugned herein.

7. The Court finds no merit in the instant application and the same is dismissed.

(Partha Sarthy, J)

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CAV DATE	N/A
Uploading Date	16.05.2024
Transmission Date	N/A

