IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40723 of 2016

Arising Out of PS. Case No.-4108 Year-2015 Thana- PATNA COMPLAINT CASE District- Patna

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Chandan Bose Son of Shri Mahitosh Bose Hindustan Motors Finance Corporation Limited regd. Office "Birla Building , 14th Floor 6/1, R.N. Mukherjee Road, P.S. Behla, Kolkata -700001

... ... Petitioner/s

Versus

1. State of Bihar
2. Rohit Kumar aged about 23 years Son of late Ramesh Prasad Resident of Bihari Kunj, Makhania, Kuna, P.S. Pirbahore, Patna-800004

... ... Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr. Saket Tiwary, Advocate
	Mr. Anuraj Singh, Advocate
	Mr. Shivam Gupta, Advocate
For the Opposite Party/s :	Mr. Jharkhandi Upadhayay, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 22-04-2024

1. This application preferred for quashing the order of cognizance dated 28.06.2016 passed by learned Additional Chief Judicial Magistrate, Patna in Complaint Case No. 4108(C) /2015 by which the learned Additional Chief Judicial Magistrate has taken cognizance under section 504 of the Indian Penal Code (in short "IPC").

2. The prosecution story as per the complaint is as follows:-

The Complainant, who is one of the Director of Imperial Car Private Limited, a dealership of Mitsubishi, Patna has alleged that since he gave some commitment to petitioner for payment of money against a sale of car he had telephonic conversation with the petitioner who was complaining about delay in such payment and allegedly some words were used by the petitioner which were allegedly not only uncivil and uncalled for but downright criminal intimidation. Thereafter the opposite party made a complaint to the superiors of the petitioner who supported the action of the petitioner. It is alleged that out of vengeance the dealership of the complainant was cancelled and security deposit was not refunded. It is further alleged that the petitioner used derogatory and defamatory words against the complainant- O.P. No. 2.

3. Learned counsel appearing for the petitioner submitted that the impugned order of cognizance is fit to be quashed/set aside at least for following three reasons;

First, the petitioner is resident of Kolkata, West Bengal and he is a high rank official of M/s Hindustan Motor Finance Corporation Limited (in short "HMFC Ltd."), where necessarily, the mandate of section 202 of Code of Criminal

Procedure (in short "Cr.P.C.") is to be followed which was not appears followed by learned trial court while taking cognizance. **Secondly**, the entire occurrence alleged to be taken place in connections with business transactions, where admittedly, opposite party no. 2 is the dealer of M/s Hindustan Motor Finance Corporation Limited and for same reason a vicarious liability also appears accrued to M/s HMFC Ltd., impleading this Company as an accused in this case, which was not done by O.P. No. 2 while lodging the complaint in issue and **thirdly**, from the narration/face of allegation as raised through present complaint case, required legal ingredients of Section- 504 of IPC, for which cognizance through impugned order was taken against petitioner is prima facie not being made out.

4. In support of aforesaid submissions, learned counsel relied upon the legal reports of Hon'ble Supreme Court as reported in the matters of ***Uday Shankar Awasthi Vs. State of Uttar Pradesh and Another*** as reported through ***(2013) 2 SCC 435, Sushil Sethi and Another vs. State of Arunachal Pradesh and Ors.*** as reported

through ***(2020) 3 SCC 240*** and ***State of Haryana and Others vs. Bhajan Lal and Others*** as reported in ***1992 Supp (1) Supreme Court Cases 335.*** Besides above learned counsel also referred the legal report of this court as reported in the matter of ***Deepak Kothari Vs. State of Bihar*** as passed in ***Cr. Misc. 9522 of 2009*** dated 18.06.2014. While concluding the argument it is submitted that the present complaint case was lodged after two months of the alleged occurrence in very planned and formulated manner when dealership of O.P. No. 2 was cancelled by M/s HMFC Ltd. and for said reason, it can be safely said that the present criminal prosecution is nothing but a malicious prosecution out of ulterior and oblique motive for wreaking vengeance on the petitioner with a view to spite him due to private and personal grudge.

5. Despite service of notice, no one turned up on behalf of O.P. NO. 2.

6. Learned APP Mr. Jharkhandi Upadhyay appearing for the State while opposing the application submitted that the allegation is specific as to abuse O.P. No.

2 over telephone against petitioner no. 1, but fairly conceded that M/s HMFC Ltd. was not arrayed as an accused being company through present complaint petition.

7. It would be apposite to quote Paragraph nos. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 & 19 of ***Deepak Kothari Case (Supra)*** for better understanding of position of law related with present case, which are as under:

> *9. To elaborate, in my opinion, in a criminal trial there are three aspects of territorial jurisdiction; i) that of the offence i.e. where it was committed, ii) the residence of the Accused and iii) that of the Complainant.*
>
> *10. Our Code of Criminal Procedure, a self contained Code is an amazing piece of legislation which keeps in mind the various contingencies from the standpoint of all the three components of a Trial i.e. the Court, the Complainant, the Accused and protects and balances interest of all the three. There is complete assurance that none of the three would be unfairly disadvantaged and ensures that there is level playing ground for each of them as we shall shortly see.*
>
> *11. The scheme of the Code provides creation of Courts in every State unambiguously defining both their territorial jurisdiction as well as the quantum of punishment they can impose vide the First Schedule under the head of Classification Of Offences appended to the Code.*
>
> *Establishment of Courts and their jurisdiction;*
>
> ***6. Classes of Criminal Courts.*** *– Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:-*
>
> *(i) Courts of Session;*
>
> *(ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrate;*
>
> *(iii) Judicial Magistrates of the second class; and*
>
> *(iv) Executive Magistrates.*
>
> ***11. Courts of Judicial Magistrates– (1)*** *In every district (not being a metropolitan area), there shall*

be established as many Courts of Judicial Magistrates of the first class and the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify: (Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.)

(2) The Presiding Officers of such Courts shall be appointed by the High Court.

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court.

12. As for territorial jurisdiction it is specifically defined in Section 177 Cr. P.C. reproduced below.

Section 177. Ordinary place of inquiry and trial. *Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.*

However, the Legislature at the same time protects a proceeding even if conducted in the wrong territorial jurisdiction if it has caused no prejudice as Section 462 suggests.

462. Proceedings in wrong place- *No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, subdivision or other local area, unless it appears that such error has in fact occasioned a failure of justice.*

13. Further Section 201 provides for transfer of a Complaint by a Magistrate who is not empowered to proceed in the matter to the appropriate Magistrate but at the pre cognizance stage as held in the case of Devendra Kishanlal Dagalia Vrs. Dwarkesh Diamonds Private Limited and Others reported in (2014) 2 SCC Page 246.

201. Procedure by Magistrate not competent to take cognizance of the case. *- If the complaint is made to a Magistrate who is not competent to* *take cognizance of the offence, he shall, -*

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

14. Since Courts have to depend on a prosecuting agency for producing an offender before him let us examine the provisions pertaining to the procedure to be adopted in a situation when the offender resides outside its local jurisdiction. Relevant Sections are reproduced below.

48. Pursuit of offenders into other jurisdictions. *– A police officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest, pursue such person into any place in India.*

67. Service of Summons outside local limits*. – When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.*

77. Where warrant may be executed. *– A warrant of arrest may be executed at any place in India.*

78. Warrant forwarded for execution outside jurisdiction. *– (1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.*

(2) <u>The Court issuing a warrant under sub-section (1) shall forward, alongwith the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should not be granted to the person.</u>

(underlining mine)

15. Thus, we find that the Code gives an option to a Court to have warrants executed through i) an Executive Magistrate, ii) Deputy Superintendent of Police, iii) the Commissioner of Police when an accused resides outside his jurisdiction.

Importantly by requiring forwarding of documents pertaining to the case u/s 78(2) an opportunity is given to an offender to make out a case for transit bail u/s 81 and at the same time it helps the Magistrate to apply his discretion on such an application. The procedure when it is sent to a Police Officer is defined under Section 79.

***79. Warrant directed to police officer for execution outside jurisdiction**. – (1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.*

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

So much for the Courts and the Prosecuting Agency.

16. As for the Complainant we find that vide Section 177 he can file a complaint only where the offence has been committed and not wherever it is convenient to him. No doubt a case can be transferred at the discretion of the Supreme Court/High Court/Sessions Court vide Sections 406/407/408 respectively under certain circumstances but importantly as we have seen that the Code, even while prescribing a different procedure in situations when an offender resides beyond the territorial jurisdiction, at no time accords any unfair advantage to any party. The offender outside local limits is not discriminated against.

17. Unfortunately to get past this hurdle gradually a practice Patna High Court Cr. Misc. No.9522 of 2009 (21) dt. 18-06-2014 9/17 developed among unscrupulous litigants to conjure territorial jurisdiction to extract an unfair advantage and ambush an unsuspecting person compelling him to drop to his knees. Litigations initiated especially by way of filing

Complaints became strategies for unlawful gain. It became a game of dice when persons from far flung areas became pawns in the hands of manipulative Complainants who had nothing to lose but a bit of money.

18. We do not need Rocket Science to understand that it would be certainly very unnerving for a person to be hauled up in Court in a remote area each of which follows its own procedural practices in matters of remand/bail/205 Cr. P.C. The impotent rage one would feel at being hit below the belt is not difficult to imagine, nor the immediate reaction to prevent a person from landing up in a situation like this.

19. When the Legislature became cognizant of this unethical practice it introduced an important amendment in section 202 in the year 2005. Before I come to the amendment I would like to quote the reasons for the same;

> ***Amendment Act, 2005*** – *False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.*
>
> *(underlining mine)*

The Section with the amendment in procedure is underlined for emphasis and quoted below:-

> ***202. "Postponement of issue of process.-****(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192, may, if he thinks fit, (and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,) postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*
>
> *Provided that no such direction for investigation shall be made, -*

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to be Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under subsection (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

8. It would be further apposite to reproduce Para-40 of ***Uday Shankar Awasthi Case (supra)***, which runs as under:-

"40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 CrPC, though the appellants were outside his territorial jurisdiction. The provisions of Section 202 CrPC were amended vide the Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases."

9. It would be further apposite to reproduce Para-

8.2 of ***Sushil Sethi Case (supra),*** which runs as under:-

> ***"8.2.*** *It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] , it is observed and held by this Court that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside."*

10. It would be appropriate to reproduce the paragraph no. 102 of ***Bhajan Lal Case (supra)*** which reads as under:

> *"102. 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 informant 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 nay 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 persons 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."

11. In the factual context of present case for the better understanding of legal position it would be further apposite to reproduce Section 504 of IPC, which is as under:

> ***"504. Intentional insult with intent to provoke breach of the peace*** – *Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*

12. From aforesaid factual and legal submissions, it transpires that the petitioner was a high rank official of M/s HMFC Ltd. and ordinarily resides at Kolkata, whereas the O.P. No. 2 who was the dealer of M/s HMFC Ltd. resides in Patna, where present criminal complaint was lodged. The fact of this case suggests that petitioner lives outside territorial jurisdiction of Patna, where the compliance of Section 202 in view of amendment as brought through Criminal Amendment Act 25 of 2005 not appears to be followed. It also appears that the company M/s Hindustan Motor Finance Corporation Limited not arrayed as an accused by O.P. No. 2 particularly, in a circumstance when he was the dealer of said company and was in business relations

with said company, where petitioner is a high rank official of M/s HMFC Ltd. Certainly, the act of petitioner as alleged arises out of business transactions for which company is vicariously liable, but in want of party as it was not arrayed as an accused, the vicarious liability cannot be said established *prima facie*. Hence, on this score also the impugned order of cognizance appears bad in the eyes of law.

13. From the bare reading of Section 504 of IPC, it appears that provocations must be followed to intentionally insults, which may likely to cause a person to break the public place or to commit any other offence. Merely, by using some untowards words as raised through complaint or using certain word which is having of abusive value, it cannot be said that person received provocation intentionally out of insult, which may likely to break the public place. Thus, fact as alleged through present complaint petition, prima facie, not fulfilling the basic legal ingredients of Section 504 of IPC and as such, the order of cognizance appears covered under guidelines nos. 1, 5 and 7 of ***Bhajan***

Lal Case (Supra). Moreover, the complaint petition was filed after two months of the alleged occurrence.

14. In view of above, impugned order of taking cognizance dated 28.06.2016 qua petitioner with all its consequential proceedings, arising thereof, as passed in connection with Complaint Case No. 4108(C)/2015 pending before learned Additional Chief Judicial Magistrate, Patna, is hereby quashed and set aside.

15. Hence, this application stands allowed.

16. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment, immediately.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.04.2024
Transmission Date	24.04.2024