

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.82927 of 2023

Arising Out of PS. Case No.-716 Year-2022 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

-
1. Rishi Raj Son of Sri Suniti Kumar Singh Resident of Flat No. 1 C, Block B, Sai Nilayam Apartment, Anisabad, Police colony, P.S. Phulwari, District- patna.
 2. Aman Kumar Son of Sri Mahesh Prasad Verma Resident of Village Sohdi, P.S. Sohsarai, District- nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ravi Kumar Singh son of Late Bajaranbali Singh Resident of Village - Koini, P.S. Manjhagarh, District Gopalganj at present residing at Tanmay Tractor, Ghosh More, Dargah Road, P.S. and District - Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate
		Mr. Rajesh Ranjan, Advocate
For the Opposite Party/s	:	Mr. Yogendra Kumar Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 08-07-2024 Heard the learned counsel for the parties.

2. This application has been filed for quashing the order dated 06.07.2023 passed by the learned J.M.F.C., Gopalganj in Complaint Case No. 716© of 2022 by which the cognizance has been taken against the petitioners.

3. As per the complainant, on 17.04.2022, petitioners along with four-five unknown persons came to the shop of the complainant and asked him as to why he sent legal notice to the company and they also abused and threatened him. Petitioner no. 01 allegedly took Rs. 2,60,000/- from cash box along with some documents.

4. Learned counsel for the petitioners submits that



the petitioners are innocent and have committed no offence as alleged and have been falsely implicated in the present case. No such occurrence as alleged in the complaint petition has taken place. Petitioner No. 1 is the employee of Total Energies Marketing India Private Limited- Formerly known as M/s Total Oil India Pvt. Ltd) (*hereinafter referred to as the Company*) and the Petitioner No. 2 is the ex-employee of the Company. The Company is a leading multinational company dealing in lubricants. He further submits that the allegations made in the complaint petition and statement furnished by the O.P. no.2 and inquiry witnesses are false and baseless. The present criminal proceeding has been initiated with a sole purpose of harassing the petitioners on account of action taken by the Company against the O.P. no. 2.

5. Learned counsel for the petitioners further submits that the O.P. no. 2 was appointed as distributor of the Company *vide* agreement dated 25/02/2020. Under the said agreement, the O.P. no.2 was required to purchase and distribute the products as per mutually agreed minimum targets as set out from time to time. However, the performance of the O.P. no.2 was found lacking by the company and on several occasions the O.P. no.2 was asked to improve his performance by increasing



the volume of sale of Company's products. He further submits that due to the lack of efforts made by the O.P. no. 2, the volume of sale of the products of the Company was increasingly lowered down. The Company on several occasions through emails sent by the Petitioner no.1 requested the O.P. no. 2 to achieve the minimum target of sale set by the company and the company by letter dated 03/01/2022 terminated the agreement dated 25/02/2020 by invoking clause 14.3 of the agreement. The aforesaid termination letter was sent *vide* email dated 06/01/2022 by the petitioner no.1

6. Learned counsel for the petitioners next submits that aggrieved by the termination of agreements, the O.P no.2 has lodged the present false case against the petitioners after more than three months of termination of the agreement. The O.P. No. 2 deliberately suppressed the fact of termination of his agreement by the company in the complaint. According to the O.P. no.2, the alleged occurrence took place on 17.04.2022 but the present case was instituted on 23.04.2022 i.e. after delay of 6 days for which no cogent reason was given. He further submits that the learned Magistrate has failed to consider the allegations made in the complaint petition were absurd and improbable and the present, false and fabricated case was



lodged only to harass the petitioners.

7. Learned counsel for the petitioners next submits that the impugned order has been passed in a perverse manner and in complete violation of the established principles of law. The Hon'ble Supreme court in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate; (1998) 5 SCC 749***, has held as follows:-

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge on to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

8. Learned counsel for the petitioners next submits the O.P. no.2 has filed the present false and fabricated complaint against the petitioners with ulterior motive and to wreck vengeance upon them and therefore, continuation of the same amounts to abuse of the process of the law. The Hon'ble Supreme court in the case of ***State of Haryana vs. Bhajan Lal reported in 1992 SCC (Crl) 426*** has held as follows:-



“The power u/s 482 should be exercised inter alia in cases 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.”

9. Learned counsel for the petitioners next submits that present case is squarely covered under the aforesaid guideline laid down by the Hon'ble Supreme court.

10. Learned counsel for the O.P. No. 02 (complainant) has submitted that from reading of the complaint, essay and other statement of the witnesses, offences are made out against the petitioners. So far as termination of the agency is concerned, he has no answer to that.

11. I have considered the submissions of the parties. It is an admitted fact that the complaint has been filed after termination of the agency by the company of which the petitioners are the employees.

12. From reading of the complaint and the materials available on record, it appears that the complaint has been filed mala fide against the petitioners by the O.P. No. 02 mala fide to wreck vengeance against them. The petitioners are being prosecuted by the O.P. No. 02 not in their individual capacity but because they are the employees of the company which has terminated the agency of the petitioners.



13. In my view, this is a mala fide prosecution and the same cannot be continued. So far as the order taking cognizance is concerned, the same is in teeth of law laid down by the Hon'ble Supreme Court in the case of ***Pepsi Food Ltd., V/s Special Judicial Magistrate; (1998) 5 SCC 749***. It is an order without assigning any reasons and without any application of mind.

14. Considering the aforesaid, I am of the view that the prosecution of the petitioners cannot be sustained because it is a mala fide prosecution and the impugned order of cognizance also cannot be sustained because it is in the teeth of the law laid down by the Hon'ble Supreme Court in the case of ***Pepsi Food Ltd*** (supra), this application is allowed.

15. The order dated 06.07.2023 passed by the learned J.M.F.C., Gopalganj in Complaint Case No. 716© of 2022 is hereby quashed.

16. The quashing of prosecution will not affect any case which may be filed by the O.P. No. 02 against the company in any civil forum.

(Sandeep Kumar, J)

Shishir/-

U		T	
---	--	---	--

