

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26698 of 2021**

Arising Out of PS. Case No.-1503 Year-2019 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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Hemant Kumar Das @ Hemant Kumar S/O Late Sri Awadhesh Kumar Das
R/O 504/A, White House Apartment, Buddha Marg, P.S. Kotwali, District -
Patna 800001.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Bhuwan Kumar S/O Upendra Yadav R/O Bhawangama, Post - Pehsara
Bhawangama, P.S. Navkothi, District - Begusarai 851127, Presently R/O
Mohalla - Yogipur, Village Kankarbagh, District - Patna 800020.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Ms. Aditi Hansaria, Advocate Mr. Nikhil Kumar Agrawal, Advocate Mr. Yash Sahay, Advocate
For the Opposite Party/s :		Mr. Jharkhandi Upadhyay, APP
For the O.P. No. 02	:	Mr. Randhir Kumar No. 1, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT**

Date : 08-04-2025

Heard Ms. Aditi Hansaria assisted by Mr. Nikhil
Agrawal, learned counsel appearing for the petitioner, learned
APP for the State and Mr. Randhir Kumar, learned counsel
appearing for the O.P. No.02.

2. This is an application for setting aside the entire
criminal proceedings against the petitioner as well as for
quashing of the order dated 02.02.2021 passed by the learned
Judicial Magistrate 1st Class, Begusarai in Complaint Case No.
1503(C)/2019 by which cognizance has been taken under



Sections 420/406 of the Indian Penal Code, 1860 against the petitioner.

3. The brief facts of the case are that the complainant filed a written complaint before the Learned Chief Judicial Magistrate, Begusarai on 05.08.2019, stating that he owns Radha Dairy and the petitioner is the Managing Director of Natural Dairy Pvt. Ltd., and Director of other companies. The complainant claimed to have a good business and friendly relationship with the petitioner since 2009. In September 2015, the petitioner promised to help the complainant to secure a loan from Andhra Bank without any collateral. The complainant, along with his parents, signed blank papers and gave them to the petitioner. Later, a CGMST loan was approved for the complainant to buy machinery. The complainant alleged that several of his sale deeds were taken fraudulently during the loan process even though it was sanctioned without any collateral. An aggregated amount of Rs. 30,07,150/- was deposited in the petitioner's account by the Manager of Andhra Bank in agreement with the petitioner, under the pretext of delivering machinery. However, the petitioner only delivered goods worth Rs. 13,01,890/- despite receipt of Rs. 30,07,150/-. Despite repeated requests, the petitioner neither delivered the goods of



the remaining value nor returned the remaining amount to the complainant. The complainant sent a legal notice to the petitioner on 02.01.2018, and they agreed that the petitioner would return the remaining amount over a period of 1 and ½ years. On 01.06.2019, the petitioner met the complainant and suggested that they will meet again on 04.06.2019 to settle the dispute. The petitioner offered to pay Rs. 5,00,000/- as full and final settlement, but the complainant insisted on Rs. 17,00,000/- or alternatively Rs. 13,00,000/- to repay the bank loan. During the course of their argument while settling the dispute, the petitioner became aggressive and assaulted the complainant. The current Branch Manager of Andhra Bank informed the complainant that they could not assist him.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has committed no offence as alleged in the Complaint Case and has been falsely implicated in this case by the complainant without any basis. He further submits that the petitioner was not aware regarding the institution of the complaint case. No summon or warrant had ever been received by the petitioner. However, in the month of March 2021, the petitioner received summons to appear before the Learned Judicial Magistrate 1st Class, Begusarai in



connection with the said Complaint Case. He further submits that the complaint case is not maintainable as the same has been filed against the petitioner in his capacity as a Director of Power House Equipments Pvt. Ltd. and Director of H.K. Machines Marketing Pvt. Ltd. without making either of the companies a party to the present case. It is a well settled law that in absence of the company, being arraigned as an accused, no other officers of the company can be held criminally liable.

5. He has next submitted that the directors cannot be held personally liable for the liabilities of the company. In this case, the complainant purchased goods from Power House Equipments Pvt. Ltd. and H. K. Machines Marketing Pvt. Ltd., with payments made to these companies, not in the petitioner's personal account. The petitioner is no longer a director of these companies, so cannot be held liable. After a loan was approved for the complainant, Power House Equipments Pvt. Ltd. supplied two Bulk Milk Coolers, issuing invoices totaling Rs. 29,12,369.50, of which Rs. 19,89,000 was received via RTGS and Rs. 6,63,000 via a cheque. H. K. Machines Marketing Pvt. Ltd. supplied a 30 KVA genset and 200 milk cans with capacity of 40 liters, issuing an invoice for Rs. 14,50,000. They received Rs. 6,00,000/- through RTGS and Rs. 2,00,000 through a



cheque, leaving a balance of Rs. 6,50,000 unpaid, despite delivery of the items. The complainant refers to a consignment order from Surya Roadways, claiming that the petitioner did not deliver the machinery despite payment. However, the declared value in the consignment order is for insurance, not the actual worth of the goods. The consignment order shows that the goods were delivered even before the invoices were issued and payment received. The complainant's claim that only goods worth Rs. 13,01,890 were delivered, is unsupported, as they did not specify as to which goods were delivered by the concerned companies and which were not.

6. It is further submitted that the complainant defaulted in the repayment of his loan from Andhra Bank i.e., Rs. 30,00,000 term loan and Rs. 20,00,000 cash credit facility. As a result, Andhra Bank initiated SARFAESI proceedings against the complainant. On May 31, 2019, the D.R.T., Patna issued a recovery certificate for Rs. 49,81,428.50/- with interest in favor of the Bank. The petitioner found out that Andhra Bank had to produce documents as directed by the Learned Judicial Magistrate 1st Class, Begusarai, which included the loan agreements and the complainant's financial statements for the year ending March 31, 2016. These documents showed that the



complainant had acknowledged fixed assets such as a Bulk Milk Cooling Unit worth Rs. 29,12,369. 50 and a genset worth Rs. 14,50,000, confirming the goods were purchased and delivered. The amounts matched the invoices provided by the two companies. The Complainant has not only failed in repayment of the loan amounts but has also not paid the amount towards the said machinery in full. As against the invoices of Rs. 29,12,369.50/-, Power House Equipments Pvt. Ltd. received only an amount of Rs. 26,52,000/- i.e., Rs. 2,60,369.50 less and, as against the invoice of Rs. 14,50,000/- towards the genset, H.K. Machines Marketing Pvt. Ltd. received only a sum of Rs. 8,00,000/- i.e., Rs. 6,50,000/- short. Accordingly, the complainant is in fact liable to pay Rs. 9,10,369.50/- towards the same to the two companies. He further submits that the present complaint is nothing but an abuse of the process of court as, having defaulted in its loan repayment, it was only for the first time in 2019, that the complainant has created this story of non-delivery of the machinery which was to be delivered in 2015 itself. Moreover, the complainant himself has shown that the said machinery is reflected in the Balance Sheet as on 31.03.2016. The basic ingredients of the offence under Sections 406 and 420 of the Indian Penal Code as alleged are not made



out against the petitioner. The complainant is attempting to evade its loan repayment responsibilities by fabricating a narrative.

7. It is next submitted that the basic ingredients of the offence under Section 420 of the Indian Penal Code, 1860, as alleged, is not made out against the petitioner. It is well settled that in order to attract the provisions of Section 420, the guilty intent at the time of making the promise is a prerequisite and an essential ingredient thereto, and subsequent failure to fulfill the promise by itself would not attract the provisions of Section 420. He further submits that the offence is alleged to have been committed by non-delivery of machinery by Power House Equipments Pvt. Ltd. and H.K. Machinery Marketing Pvt. Ltd. and accordingly in the absence of the company being arraigned as an accused, no other officer of the company can be held criminally liable. It is submitted that the allegations in the complaint petition at best constitute breach of contract against the companies for which the complainant has appropriate remedy under the civil law. It is settled law that civil disputes cannot be resolved by taking recourse to criminal proceedings.

8. The learned counsel for the petitioner has further relied upon various judgments of Hon'ble Supreme Court in the



case of *Ravindranatha Bajpe vs Mangalore Special Economic Zone Ltd and Ors etc, (2022) 15 SCC 430, Satishchandra Ratanlal Shah Vs State of Gujarat & Anr, (2019) 9 SCC 148* and in the case of *Sharad Kumar Sanghi Vs Sangita Rane, (2015) 12 SCC 781*.

9. The learned counsel for the petitioner has also relied upon a judgment of this Court in the case of *Minar International Ltd & Anr Vs The State of Bihar & Anr., 2017 SCC OnLine Pat 4054*.

10. The learned APP appearing for the State has opposed the application of the petitioner and so far as the learned counsel for the O.P. No. 02 is concerned, his only submission is that the money which is due to the complainant may be directed to be returned by the petitioner so that he can clear his liabilities.

11. I have heard and considered the rival submissions of the parties and have also gone through the records available on record.

12. From the records it appears that the present complaint has been filed on 05.08.2019. The Presiding Officer, Debts Recovery Tribunal, Patna on 31.05.2019 passed an order by which the account of the O.P. No. 02 was declared NPA and



recovery certificate was issued for recovery of Rs. 49,81,428.50/- along with pendente lite and future interest @ 10 per annum simple from 01.05.2018 till realization. Thereafter the complaint was filed making the petitioner and the Branch Manager of the bank as an accused. In the complaint case, after inquiry cognizance has been taken only against the petitioner and not against the Branch Manager.

13. From reading of the complaint, it appears that the present complaint has been filed after the petitioner's bank account was declared N.P.A. and a huge liability was fixed against the petitioner. From the balance sheet produced by the bank it appears that the complainant himself has shown Bulk Milk Cooling Unit for an amount of Rs. 29,12,369.50/- and a Genset for an amount of Rs. 14,50,000/- as its fixed asset. The complainant has made a complaint for non-supply of these two fixed assets in the complaint therefore it is an admitted fact based on documents of unimpeccable nature that the machinery have been supplied to the complainant by the company and a false and fabricated case has been filed by the complainant to pressurize the petitioner and the bank. This is a clear case of misuse.

14. The Hon'ble Supreme Court in the case of



Ravindranatha Bajpe (supra) has held as follows:-

“8. In *Sunil Bharti Mittal* [*Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] , it is observed by this Court in paras 42 to 44 as under :

“(iii) Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person

42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In *Aneeta Hada* [*Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] , the Court noted that if a group of persons that guide the business of the company have



the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of “alter ego”, was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.”

8.1. In *Maksud Saiyed v. State of Gujarat* [*Maksud Saiyed v. State of Gujarat*, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] , in para 13, it is observed and held as under :

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. 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. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. 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.”

8.2. As observed by this Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate* [*Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] and even thereafter in a catena of decisions, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. In para 28 in *Pepsi Foods Ltd.* [*Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , it is observed and held as under : (SCC p. 760)

“28. 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 home 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.”

8.3. As held by this Court in *India Infoline Ltd. v. GHCL Employees Stock Option Trust* [*India Infoline Ltd. v. GHCL Employees Stock Option Trust*, (2013) 4 SCC 505 : (2013) 2 SCC (Cri) 414] , in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are



Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A-1 and A-6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A-1 and A-6.”

15. The Hon’ble Supreme Court in the case of

Sharad Kumar Sanghi (Supra) has held as follows:-

“9. The allegations which find place against the Managing Director in his personal capacity seem to be absolutely vague. When a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation 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 has been held, thus: (SCC p. 674, para 13)

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. 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. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the



respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. 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.”

10. In this regard, reference to a three-Judge Bench decision in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] would be apposite. While dealing with an offence under Section 138 of the Negotiable Instruments Act, 1881, the Court explaining the duty of a Magistrate while issuing process and his power to dismiss a complaint under Section 203 without even issuing process observed thus: (SCC p. 96, para 5)

“5. ... a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words ‘if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding’. The words ‘sufficient ground for proceeding’ again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed.”

After so stating, the Court analysed Section 141 of



the Act and after referring to certain other authorities answered a referent and relevant part of the answer reads as follows: (*S.M.S. Pharmaceuticals Ltd. Case [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975]* , SCC p. 103, para 19)

“19. ... (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.”

The same principle has been reiterated in *S.K. Alagh v. State of U.P.* [*S.K. Alagh v. State of U.P.*, (2008) 5 SCC 662 : (2008) 2 SCC (Cri) 686] , *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.* [*Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.*, (2010) 10 SCC 479 : (2011) 1 SCC (Cri) 68] and *GHCL Employees Stock Option Trust v. India Infoline Ltd.* [*GHCL Employees Stock Option Trust v. India Infoline Ltd.*, (2013) 4 SCC 505 : (2013) 2 SCC (Cri) 414]

11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in *Aneeta Hada v. Godfather Travels and Tours (P) Ltd.* [*Aneeta Hada v. Godfather Travels and Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] in the context of the Negotiable Instruments Act, 1881.



12. At this juncture, it is interesting to note, as we have stated earlier, that the learned Magistrate while passing the order dated 22-10-2001, had opined, thus:

“It appears prima facie from the complaint filed by the complainant, documents, evidence and arguments that the accused company has committed cheating with the complaint by delivering old and accidented vehicle to her at the cost of a new truck. Accordingly, prima facie sufficient grounds exist for registration of a complaint against the accused under Section 420 IPC and is accordingly registered.”

16. The Hon’ble Supreme Court in the case of

Satishchandra Ratanlal Shah (*Supra*) has held as follows:-

“11. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with Section 406 IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that Respondent 2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognises a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment.

12. In this context, we may note that there is nothing either in the complaint or in any material before us, pointing to the fact that any property was entrusted to the appellant at all which he dishonestly converted for his own use so as to satisfy the ingredients of Section 405 punishable under Section 406 IPC. Hence the learned Magistrate committed a



serious error in issuing process against the appellant for the said offence. Unfortunately, the High Court also failed to correct this manifest error.

13. Now coming to the charge under Section 415 punishable under Section 420 IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See *Hridaya Ranjan Prasad Verma v. State of Bihar* [*Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC 168 : 2000 SCC (Cri) 786] .) In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached Respondent 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

14. Moreover, this Court in a number of cases has usually cautioned against criminalising civil disputes, such as breach of contractual obligations (refer to *Gian Singh v. State of Punjab* [*Gian Singh v. State of Punjab*, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988]). The legislature intended to criminalise only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 IPC.”

17. This Court in the case of *Minar International*

Ltd. & Anr (Supra) has held as follows:-

23. In view of the legal position enunciated in the above judgments of the Supreme Court, it is



obvious that merely because the agreed amount was not paid by the petitioners to the complainant, the ingredients of “cheating” punishable under Section 420 of the IPC would not be attracted. What was required to attract the offence of “cheating” was existence of dishonest intention right from the beginning and intentional inducement at the very inception. It is the admitted case of the complainant that during the transaction of business certain payments were made by the accused. Thus, simply because the full payment was not made and payments made were irregular, the existence of dishonest intention right from the beginning and intentional inducement at the very inception cannot be inferred. Obviously, such ingredients are wanting from the complaint.

32. Thus, it would be evident that a given set of facts may make out purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence. There is substance in the argument of learned Senior Advocate for the complainant that a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. However, simply because civil law remedies are time consuming, a matter, which is essentially of civil nature cannot be allowed to be converted into a criminal offence, as criminal proceedings are not short cut of other remedies available in law. The Supreme Court has cast a duty upon the courts to deprecate and discourage any effort to settle civil disputes and claims, which do not involve any criminal offence by applying pressure through criminal



prosecution.

18. It is an admitted position that the petitioner is the contractor of the company and on account of repayment of loan to the bank this false case has been filed by the complainant to extract money from the petitioner. It is also an admitted position that though the petitioner has alleged non-supply of Milk Cooling Unit and a Genset but these two machineries have been supplied to the complainant which are reflected in the balance sheet of the company of the petitioner.

19. The petitioner should not be and cannot be allowed to criminalise any alleged breach of contract. There is no dishonest deceptive inducement reflected from the records on the part of the petitioner and in my opinion is made out. Moreover, the present case appears to be a mala fide prosecution and in view of the law laid down by the Hon'ble Supreme Court in the case of *State of Haryana Vs Bhajan Lal, 1992 Supp (1) SCC 335*, the present prosecution cannot be allowed to continue. The petitioner as a Director of the company cannot be prosecuted vicariously for the alleged misdeeds of the company as there is no specific allegation against the petitioner and the company has not been made accused.

20. Accordingly, the present application stands



allowed and the entire criminal proceedings against the petitioner as well as the order dated 02.02.2021 passed by the learned Judicial Magistrate 1st Class, Begusarai in Complaint Case No. 1503(C)/2019 is hereby set side.

(Sandeep Kumar, J)

Shishir/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.05.2025
Transmission Date	16.05.2025

