

(2018) 05 PAT CK 0083

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No.652 of 2015

Raj Kumar Agrawal

APPELLANT

Vs

The State of Bihar & Ors

RESPONDENT

Date of Decision : 18-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406, 420, 468, 470, 471, 506
Negotiable Instruments Act, 1881 — Section 138

Citation : (2018) 4 PLJR 103

Hon'ble Judges : RAJEEV RANJAN PRASAD

Bench : Single Bench

Advocate : P.K. Shahi, Alok Kr. Agrawal, Priya Gupta, Anil Kumar Sinha, Amresh Kr. Sinha, Jitendra Singh, Brajendra Nath Pandey, Tej Pratap Singh

Final Decision : Dismissed

Judgement

1. Heard Mr. P.K. Shahi, learned Senior Counsel assisted by Mr. Alok Kumar Agrawal, Advocate for the petitioner and Mr. Jitendra Singh, learned

Senior Counsel assisted by Mr. B.N. Pandey, Advocate for the private respondent.

2. Petitioner has moved this Court for quashing of the First Information Report (FIR) being Kotwali (Patna) P.S. Case No. 601/14 dated 01.10.2014

registered under Sections 406 / 420 / 468 / 470 / 471 / 506 / 120B of the Indian Penal Code.

3. The allegations, as appearing from the written complaint made by the respondent no. 5, who is an Assistant Manager of a Company engaged in the business of procurement in commodities for buyers providing an electronic trading platform for spot contract in commodities etc., are as under.

3. 1 It is alleged that this petitioner along with Smt. Pushpa Devi Agrawal and Sri Ranjit Agrawal as also Sri Dipak Agrawal and Sri Sunil Bhalotia

approached the informant and one Mr. Abhay Kumar working at the Patna Office of the complainant Company. The petitioner allegedly introduced

himself as the Director of Progressive Sales Pvt. Ltd. engaged in the business of Sugar Trading since 1988. The informant was given to understand

that Mr. Sunil Bhalotia is the brother of one Sri Ram Bhalotia and Sri Prakash Bhalotia who were already in the business of trading through National

Spot Exchange Limited (NSEL) under their Procurement Agreement. It is further alleged that the petitioner represented himself as a renowned

member of Magadh Stock Exchange (MSE) being associated with Iron & Steel Industry business in Patna.

3.2 The allegation is that during the meeting all the accused persons misrepresented that M/s Ayush Sales Pvt. Ltd. is a established entity in different

trading business, particularly in Sugar Trade since 2005 and represented that their association will be beneficial. The allegation also states that the

accused persons handed over a fake profile of their company depicting the aforesaid false and frivolous claims and in the said profile Mr. Ranjit

Kumar Pansari was mentioned as a business partner of M/s Ayush Sales Pvt. Ltd. and Mr. Dipak Agrawal as a person for reference. This petitioner

and Mrs. Pushpa Agrawal also submitted their personal Bio-Data, their PAN Card and Voter I.D. Card. In the Voter I.D. Card the father's

name of Raj Kumar Agrawal has been mentioned as Jagdish Prasad Agrawal but, as per allegation, in the PAN Card his father's name was

shown as Phoolchand Agrawal.

3.3 As the allegation goes on, it is stated that the complainant company signed a Procurement Agreement on 04.04.2011 with the accused company,

namely, M/s Ayush Sales Pvt. Ltd. through its Director Mr. Raj Kumar Agrawal (petitioner) and the accused company made substantial business

transactions with the complainant.

3.4 It is alleged that in March, 2012 the accused persons insisted for amendment in Procurement Agreement and represented that by the amended

agreement the complainant company would be entitled to a profit of 1.20% out of their big order taking into consideration the purchase value.

Allegedly they further induced by assuring that in case of quick procurement of sugar the corresponding invoice will be cleared in two working days

instead of 20 days; thereafter the accused persons assured that they would hand

over post dated cheques to ensure immediate clearance of outstanding amount accruing time to time against the payment to be made by NSEL. This led to signing of an amended Procurement Agreement dated 01.04.2012 with the present petitioner.

3.5 It is further alleged that on 25.09.2012 the accused persons placed a Procurement Order to the complainant company for one rake of sugar

containing 25,500 quintals @ Rs. 3548/- per quintal to be procured from a seller and for this the complainant company made the payment. Thereafter,

the complaint raised an invoice dated 03.10.2012 on the accused company. However, the accused company did not clear the invoice for Rs. 9.73

Crores even after expiry of 20 days, instead the accused company made assurances for clearing the outstanding with interest. Thereafter, it is alleged

that on 01.11.2012 the accused persons placed another procurement request for 26,000 quintals of sugar @ 3363/- per quintal and assured that

payment of both the invoices will be cleared simultaneously along with interest. This petitioner and one Vivek Agrawal also specified the name of the

seller as M/s Athani farmers Sugar Factory Ltd. The value of sugar was Rs. 4.83 Crores but the accused persons did not make payment of the above

referred two invoices.

3.6 According to the informant, this petitioner gave balance confirmation in writing dated 22.05.2013 to the complainant company with regard to total

outstanding amount, they admitted liability but did not clear the payments. It is alleged that this petitioner being the authorized signatory of the accused

company issued two post-dated cheques bearing no. 107426 dated 28.09.2013 for Rs. 14.50 Crores and Cheque no. 107425 dated 24.10.2013 for an

amount of Rs. 2,53,19,542/-, both drawn on State Bank of India, Saharsa Katchery Road Campus Branch, Saharsa in favour of the complainant

company. The cheque was duly signed and stamped by Raj Kumar Agrawal (the petitioner) as the Director of the accused company. However, when

presented for payment with the bankers of the petitioner they stood dishonoured for the reasons â??Insufficient Fundsâ??.

3.7 It is further alleged that the accused persons, namely, Vivek Agrawal and this petitioner visited the complainant company on 08.11.2013 and

accepted the liability of M/s. Ayush Sales Pvt. Ltd. towards the complainant company and promised to clear the outstanding amount. It is also alleged

that the complainant company when contacted Dipak Agrawal to persuade the accused persons to make the payment to NSEL they did not pay any

heed to the request of the informant, the informant alleges their involvement in the conspiracy and misrepresentation made at the very beginning.

3.8 The allegation that the accused persons have caused wrongful loss to the complainant and have made wrongful gain to the tune of Rs. 17.04

Crores.

3.9 On 30.08.2014 the informant was sitting with the former employee of NSEL, namely, Sri Abhay Kumar, Raj Kumar Agrawal (the petitioner),

Ranjit Agrawal and Vivek Agrawal, all came to Patna Office and used abusive language and threatened of dire consequences. A copy of the First

Information Report is enclosed as Annexure-1 to the Writ Application.

4. Arguing on behalf of the petitioner Mr. Shahi, learned Senior Counsel has basically taken two arguments before this Court. At first instance, his

submission is that the allegations made in the First Information Report are all relating to the business transactions which had taken place within the

district of Supaul and that no part of the cause of action has arisen at Patna. Learned Senior Counsel has for that purpose taken this Court through the

copy of Agreement, as contained in Annexure-2, and the amended Agreement vide Application. It is pointed out that according to the Agreement, the

transactions between the parties would be subject to Mumbai jurisdiction. It is his submission that in any view of the matter the F.I.R. lodged at Patna

cannot be proceeded with and is fit to be quashed for want of territorial jurisdiction.

5. Another submission of Mr. Shahi, learned Senior Counsel would be that given the allegations made in the First Information Report without adding or

subtracting any thing out of it the Court may easily come to a conclusion that the dispute in the present case are at best in the nature of a civil dispute.

In his submission a case of purely civil nature has been tried to be given a colour of criminal proceeding. He has for this purpose relied upon the

judgment of the Honâ??ble Supreme Court in the case of Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors., reported in (2007) 12

SCC 1.

6. It has been strenuously argued on behalf of the petitioner referring to the copy of the ledger containing different transaction details from 05.04.2011

till 03.10.2013 maintained by the accused company M/s Ayush Sales Pvt. Ltd., that the parties were in the nature of commercial transactions and had

been maintaining running ledger account, they were debiting and crediting the transactions and this being a simple case of commercial transaction even

if a dispute has arisen because of non-payment of some of the bills of the complainant company that would not give rise to a criminal case.

7. In order to buttress his submissions that the lodging of the present F.I.R. is nothing but an attempt to give a civil dispute the colour of criminal

proceeding by making some false allegations as to abuses and threats given by the accused persons at Patna, learned Senior Counsel has further taken

this court through the records to submit that earlier when the two post-dated cheques were lodged by the complainant company and stood dishonoured

on presentation a complaint was made in the competent court at Mumbai and on the basis of the said complaint made, the court of learned

Metropolitan Magistrate, 48 Court, Andheri, Mumbai took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881. The

said case was, however, transferred by virtue of the order passed by the Honâ??ble Supreme Court in the district of Supaul but now the complainant

is again trying to get the said case transferred to Patna and for that a transfer petition is pending before the Honâ??ble Supreme Court.

8. It is further brought to the notice of this Court that by virtue of an order passed by the Honâ??ble Mumbai High Court on an application filed under

the provision of the Arbitration and Conciliation Act, 1996 an arbitration proceeding has also been initiated between the parties in which evidences

have already been led and the matter is pending for argument. It is thus submitted that the First Information Report is fit to be quashed by this Court.

9. On the other hand Mr. Jitendra Singh, learned Senior counsel has opposed the application. It is submitted that lodging of a second F.I.R. in view of

the fresh cause of action is always available to the informant and there cannot be a bar. The First Information Report, according to Mr. Singh, is not

fit to be interfered with at this stage when the allegations made against the petitioner is still under investigation. He has again taken this Court through

the contents of the First Information Report and has submitted that this petitioner being the Director and authorized signatory of a Private Limited

Company, namely, M/S Ayush Sales Pvt. Ltd. had allegedly entered into a conspiracy to cheat the NSEL on whose behalf the present F.I.R. has been

lodged by the private respondent. According to him, the agreement was executed only on 4th April 2011 and thereafter the amended agreement was

signed between the parties on 01.04.2012, initially some transactions were going on, some of which may have been reflected in Annexures 3 and 4.

However, it will appear from perusal of Annexure-4 that after getting supply of the procurements this petitioner had issued two post-dated cheques for

huge amount of over 14 crores but when those cheques were presented both the cheques stood dishonoured for want of sufficient funds. It is

submitted that from the conduct of the petitioner and the manner in which after getting procurements of huge amount of over Rs. 14 crores the

payments have not been made to the complainant, a reasonable and prudent person can understand that right from the beginning the accused persons

had an intention to cheat the informant. It is further submitted that even though a plea has been taken that no part of cause of action has arisen within

the territorial jurisdiction of Patna, such argument is liable to be rejected only by referring to the seal and signature appearing at Annexure-2. Learned

Senior Counsel submits that the Agreement (Annexure-2) has been signed in presence of the Notary Public at Patna and at two places the Notary

Public has put his seal and signature on both pages of the Agreement appearing at Annexure-2. It is submitted that a part of the cause of action has

definitively arisen at Patna if the allegations made in the First Information Report are read out wherein it is clearly stated as to how the accused

persons visited the Patna Office of the informant, abused him and threatened him of dire consequences.

10. In view of the materials available on the record learned Senior Counsel submits that this Court at this stage may not like to interfere with the

ongoing investigation with the case as it would not be just and proper to appreciate the evidences to take a view otherwise when the case is still under investigation.

11. It is further submission of learned Senior Counsel that while it is true that in appropriate cases where it is found that a civil dispute has been tried

to be given the colour of criminal proceeding this Court may in exercise of its extra-ordinary writ jurisdiction quash the First Information Report but at

the same time it has been settled by the judicial pronouncements of the Honâ??ble Apex Court that there is no bar in launching of a criminal

prosecution side by side with the civil proceeding if the facts alleged are such that it would constitute a criminal offence.

12. Having heard learned Senior Counsel for both the parties as also learned counsel for the State and after going through the contents of the First

Information Report, I am of the considered opinion that it would not be just and proper for this Court to exercise its extra-ordinary writ jurisdiction to

quash the First Information Report at this stage when the investigation is still going on.

13. The plea taken by Mr. Shahi, learned Senior Counsel that the F.I.R. is fit to be quashed on the ground of lack of jurisdiction on the part of the

investigating authority is liable to be rejected as it appears from a bare perusal of Annexure-2 that the Agreement (Annexure-2) was signed in

presence of the Notary Public and in proof thereof the Notary Public at Patna had put his seal and signature. It is well settled that the cause of action

depends upon a bundle of causes and even if a fraction of the cause has arisen within the jurisdiction of the authorities at Patna, they would be within

their rights to lodge the First Information Report and investigate into the matter.

14. Further submission of Mr. Shahi, learned Senior Counsel that it is a case of purely civil dispute which has been tried to be given the colour of a

criminal proceeding does not impress this Court. The nature of the allegations are clearly suggesting that according to the informant the accused

persons had made the informant to believe by misrepresentation and assertions that the invoices of NSEL towards payment of huge amount of money

would be cleared within a few days but soon after placing procurement orders and on receipt thereof when the petitioner issued two post-dated

cheques over a sum of 14 crores both the cheques stood dishonoured. The fact remains that the complaint was filed at Mumbai in which the complaint

was made with respect to dishonour of cheques and the learned Metropolitan Magistrate at Mumbai has taken cognizance of the offences under

Section 138 of Negotiable Instruments Act and the said complaint is still pending, in the opinion of this Court filing of the present F.I.R. when the

informant is alleging the manner of cheating and the further cause of action of entering into the Patna Office, abusing and threatening the informant

would require investigation in the matter. If the informant has lodged an F.I.R. giving the manner of cheating and the further cause of

action/occurrence which had taken place at Patna then this Court would not be willing to quash the F.I.R. and to stop the investigation at the

threshold. In the opinion of this Court it is not one of those cases in which the ratio of the judgment of the Honâ??ble Apex Court in the case of Inder

Mohan Goswami (Supra) would apply. The said case was being considered by the Honâ??ble Apex Court in a different fact situation and a bare

perusal of the facts of the said case and that of the present case would show that the allegations in the present case, if found correct upon

investigation, it may constitute a prima facie offence for which the accused may be proceeded against in accordance with law. This, however, will be

possible only after completion of investigation. Since the investigation is still pending it is in the domain of the Investigating Officer to collect evidences

and take a view as to whether or not those are sufficient to proceed against the petitioner. This Court would not entertain the defence of the petitioner

and shall not make any observation as regards the evidence and the quality thereof.

15. This being the position, the Court is not persuaded to quash the First Information Report.

16. The Writ Application has no merit. It is accordingly dismissed.