

IN THE HIGH COURT OF JHARKHAND, RANCHI

W.P.(Cr.) No.425 of 2015

- 1.Aseem Sood @ Asim Sud son of Sri Brahma Prakash Sood
- 2.Hemant Pujari, son of late Tika Ram Pujari

-- Versus --

- 1.State of Jharkhand
- 2.Geeta Nandan Varshney

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners	:-	Mr. Pandey Neeraj Rai, Advocate
For the State	:-	Mr. Rahul Saboo, Advocate
For the O.P.No.2	:-	Mr. Abhijit Kumar Singh, Adocate

7/29.03.2023 Heard Mr. Pandey Neeraj Rai, the learned counsel for the petitioners, Mr. Rahul Saboo, the learned counsel appearing on behalf of the respondent State and Mr. Abhijit Kumar Singh, the learned counsel appearing for the respondent/O.P.No.2.

This petition has been filed for quashing of the entire criminal proceeding in connection Complaint Case No.C/1 Case No.2944 of 2014 including the order taking cognizance dated 28.05.2015 passed by the learned Chief Judicial Magistrate, Jamshedpur under section 406, 420, 120B of the IPC, pending in that learned court.

The complaint case has been filed alleging therein that the complainant was acquainted with the accused during the course of his business. It has been further alleged that the complainant was approached by the accused nos.2 and 3 sometime in January, 2010 with an offer by the accused persons to be their sales distributor in and around Jamshedpur region for newly launched herbal personal care products. The complainant was assured by the accused nos.2 and 3 for promotional commission on the MRP of goods sold and also of timely payment. The complainant was also assured for returning the damaged or unsold stock and reimbursement of their value and was further assured of not suffering any loss. Upon the

assurances and the representations of the accused nos.2 and 3 the complainant agreed to act as the sales distributor. The complainant was informed that upon placing the order with the accused, he would receive delivery of goods for sale and distribution from the company Super Stockist and CFA at Ranchi. It is alleged that the accused failed to make timely payment of commission to the complainant despite promise being made to make payment. Neither the damaged goods were taken back as has been promised. When the matter was raised with the Area Sales Manager of the company the accused no.3 claiming Rs.5,22,788/- including the cost of damaged goods of Rs.38,979/- no response was given to the complainant. It is alleged that the complainant received a phone call from the accused no.2 requesting complainant's cooperation for ensuring good volume of sales of new products being launched to which the complaint refused unless his earlier claims were settled. Up this the accused no.2 promised to settle the demands. An e.mail was alleged to be sent by the accused no.3 on 05.07.2013 wherein details of the complainant's claim was sought for which a promise to adjust the previous claim against his future orders within a period of 6 months subject to the condition that each order would have to be for a minimum value of Rs.1,00,000/-. Accordingly the complainant submitted his claim via e.mail to the Area Sales Manager expressing his inability to take risk of placing order of Rs.1,00,000/- which was replied by the accused no.3 via e.mail informing about company's new slab of billing since January, 2012 according to which all pending dues stands cleared. The complainant in turn again requested for settling his pending claim and in response thereto the accused no.3 by his e.mail dated 10.7.2013 asked the complainant to send his claim in excel sheet which upon verification would be settled. It has been alleged that that thereafter no response was given by the accused and a legal notice dated 26.4.2014 was served upon the accused by the complainant which stood returned due to change in address. Accordingly impugned criminal complaint was filed on 24.7.2014 against the accused including the petitioners.

Mr. Pandey Neeraj Rai, the learned counsel for the petitioners submits that the complainant's statement on solemn affirmation was recorded on 17.09.2014 in which the complainant reiterated that the case is against the company and Managing Director and also the Manager of the company in question and he admitted that on the oral agreement it was provided and no agreement was entered into and he asserted about monetary claim in favour of damage and also admitted that commission has been paid on few occasion. He submits that the petitioners are the Managing Director and Manager of M/s Proveda Herbal Private Limited, Gurgaon. He submits that the company is not made accused and in view of considering that the petitioners are Managing Director and Manager of the said company vicarious liability under the I.P.C cannot be fastened and to buttress his argument, he relied in the case of "*S.K. Alagh v. State of U.P.*"; (2008) 5 SCC 662 and "*Sunil Bharti Mittal v. C.B.I.*"; (2015) 4 SCC 609. He submits that no case of cheating is made out as in solemn affirmation he has admitted about receiving of some payment and to buttress his argument, he relied in the case of "*Alpic Finance Ltd. v. P. Sadasivan and Another*"; (2001) 3 SCC 513. According to him, there is no ingredient of cheating which could have been said to be made by the petitioners to the complainant and to buttress his argument he relied in the case of "*Dalip Kaur and Others v. Jagnar Singh and Another*"; (2009) 14 SCC 696. On these grounds, he submits that the entire criminal proceeding may kindly be quashed so far these petitioners are concerned.

On the other hand, Mr. Abhijit Kumar Singh, the learned counsel appearing for the O.P.no.2 submits that the learned court looking into the solemn affirmation as well as enquiry witnesses has been pleased to take cognizance and the order taking cognizance is a reasoned order and he submits that criminality is made out and the learned court has rightly taken cognizance.

The learned counsel appearing for the respondent State submits that the complaint case was filed and looking into the solemn

affirmation and enquiry witnesses the learned court has taken cognizance.

In view of the above facts and submission of learned counsels appearing for the parties, the Court has gone through the contents of the complaint petition and the order taking cognizance and finds that for dispute with regard to payment the complaint case was filed. It has been alleged that certain stock was not acquired by the petitioners and certain amount has also not been paid and the complaint case has been filed. It appears that for commercial transaction the criminal case has been put into motion. The complainant in solemn affirmation has admitted that on the oral agreement it was provided and he has also admitted that certain amount has been paid thus, the ingredient of cheating being the intention of cheating from the very beginning is not made out in view of definition of cheating under section 415 IPC. What is the role of these petitioners has not been stated in the complaint petition and it has also not been disclosed in the solemn affirmation as well as by enquiry witnesses and in that view of the matter vicarious liability cannot be fastened on these two petitioners.

In view of the above facts, reasons and analysis the entire criminal proceeding including the cognizance order arising out of Complaint Case No.C/1 Case No.2944 of 2014, pending in the court of learned Chief Judicial Magistrate, Jamshedpur, so far these petitioners are concerned, is quashed.

W.P.(Cr.) No.425 of 2015 allowed in the above terms and disposed of.

It is made clear that this petition is allowed with regard to the two accused persons, who are the petitioners in this petition.

The Court has not interfered with the order taking cognizance so far as other accused persons are concerned.

Pending petition if any also stand disposed of.

(Sanjay Kumar Dwivedi, J.)