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WYETH LIMITED & ORS.

v.

STATE OF BIHAR & ANR.

(Criminal Appeal No. 1224 of 2022)

B

AUGUST 11, 2022

**[INDIRA BANERJEE AND V. RAMASUBRAMANIAN, JJ.]**

- Code of Criminal Procedure, 1973: s. 482 – Quashing of FIR/complaint – When – Held: Complaint is to be quashed when no offence is made out by a careful reading of the complaint – On facts, respondent no. 2 filed private complaint u/s. 200 Cr.P.C, which was referred by the court u/s. 156(3) to the police for registration of FIR against the appellants u/ss. 406, 420, 408, 460, 471, 384, 311, 193, 196/120-B IPC – Reading of the complaint, shows that none of the ingredients of any of the offences complained against the appellants made out, thus, it cannot be said that how FIR was registered and charge-sheet was filed – Complaint itself disclosed nothing more than a commercial relationship which broke, as such it was not possible for respondent No.2 to enlarge the scope of his complaint by merely adding the language used in the text of the Penal Code – Furthermore, the appellant No.1 had instituted a civil suit against the respondent, obtained an order for the appointment of a Court Receiver; and also lodged a criminal complaint, which the High Court refused to quashed; and it is only thereafter the respondent No.2 chose to file the said complaint – Also, the High Court erred in overlooking the application for bringing on record the subsequent development of the filing of the charge-sheet and the prayer for inclusion of the relief of quashing of the charge-sheet in the original petition – Thus, the FIR and the charge-sheet against the appellants quashed.*

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1224 of 2022.

From the Judgment and Order dated 14.05.2018 of the High Court of Judicature of Bihar at Patna in Criminal Miscellaneous No. 13742 of 2014.

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Mukul Rohatgi, Gopal Jain, Sr. Advs., Ajay Singh, Samit Rohatgi, A  
 Ms. Alka Sinha, Amit Kumar, Vivek Kumar Singh, Anuvrat Sharma,  
 Advs. for the Appllants.

Narender Hooda, Sr. Adv., Saket Singh, Ms. Somya Shree, Azmat Amanullah, Mrs. Niranjana Singh, Shaurya Lamba, Akash Bhuyan, Rushte Saluja, Ranjan Kumar Pandey, Advs. for the Respondents. B

The Judgment of the Court was delivered by

**V. RAMASUBRAMANIAN**

1. Leave granted.

2. Aggrieved by an order passed by the High Court of Judicature at Patna dismissing a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short “*Cr.P.C*”) for quashing an FIR registered at the instance of the second respondent herein, the appellants have come up with the above appeal. C

3. Heard the learned senior counsel appearing for the appellants, the learned standing counsel for the State of Bihar and the learned standing counsel appearing on behalf of the respondent No.2, who was the complainant. D

4. The respondent No.2 was engaged by appellant no.1 as its Carrying and Forwarding agent (C&F), on certain terms and conditions, reduced into writing. The agreement continued from time to time until February-2012. E

5. Thereafter disputes arose between appellant No.1 and respondent No.2 which led to appellant No.1 filing a civil suit on the file of the High Court of Judicature at Bombay, in CS No.1432 of 2012. In the said suit, the High Court passed an order appointing a Court Receiver to take possession of the goods including medicines belonging to appellant No.1, which were in the possession of respondent no.2. The Court Receiver seems to have executed the warrant and recovered possession of certain goods, the details of which are not relevant for our present purpose. F

6. Apart from filing a civil suit, appellant No.1 also filed a criminal complaint against respondent No.2 for alleged offences under Sections 406 and 420 IPC. By an order dated 14.08.2013, the learned Chief Judicial Magistrate, Patna took cognizance and issued summons to respondent No.2. G

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- A        7. Thereafter respondent No.2 filed a criminal complaint before the learned Chief Judicial Magistrate, Patna. On 12.12.2013, the learned Chief Judicial Magistrate, Patna passed an order directing the copy of the complaint to be forwarded to the Patliputra Police Station, for registration of an FIR against the appellants herein. Pursuant to the said order, the Patliputra Police Station registered an FIR in Crime No.17 of 2014 on 07.01.2014, against the appellants herein, for alleged offences under Sections 406, 420, 408, 460, 471, 384, 311, 193, 196 read with Section 120-B IPC.
- B        8. Challenging the FIR so registered, the appellants filed a petition in Criminal Miscellaneous Petition No.13742 of 2014 on the file of the High Court of Judicature at Patna, under Section 482 Cr.P.C seeking the quashing of the same. When the said petition came up for final hearing in the year 2018, the Court was informed that the police had already filed a charge-sheet and that the Chief Judicial Magistrate had taken cognizance of the same.

- C        9. In the light of the subsequent development as aforesaid, the High Court of Judicature at Patna dismissed the quash petition on the only ground that it was not proper to keep the matter pending any further. The High Court did not choose to go into the merits of the contentions, despite the fact that appellant No.1 moved an application in IA No.1015 of 2014 for bringing on record the charge-sheet and also for inclusion of a prayer for quashing the charge-sheet.
- D        10. Aggrieved by such a disposal of their quash petition, the appellants are before this Court.

- E        11. The primary contention of Mr. Mukul Rohatgi and Mr. Gopal Jain, learned senior counsel appearing for the appellants is: *(i)* that the complaint filed by respondent No.2 does not disclose the commission of any offence; *(ii)* that the complaint filed by respondent No.2 was only a counter blast to the civil suit filed by appellant No.1 and a criminal complaint lodged by the appellants against respondent No.2; *(iii)* that the High Court overlooked the pendency of an application for bringing on record the charge-sheet and for the inclusion of a prayer for quashing of the charge-sheet.

- F        12. In response, it is contended by Mr. Narender Hooda, learned senior counsel for respondent No.2 that though the appellants moved an application for bringing on record the subsequent development of filing

of the charge-sheet and also for inclusion of a prayer for quashing the charge-sheet, the appellants were negligent in not pressing for the same at the time of hearing of the quash petition. According to the learned senior counsel for respondent No.2, the appellants sought adjournment on several occasions, without pressing for an order in the Interlocutory Application and that therefore the Court found it not proper to keep the quash petition pending, impeding the trial.

13. Before going into rival contentions, it would be appropriate to have a look at the criminal complaint filed by respondent No.2 on the file of the Chief Judicial Magistrate, Patna, under Section 200 Cr.P.C, which formed the foundation for the Magistrate passing an order under Section 156(3) Cr.P.C, the registration of the FIR by the police and the filing of the charge-sheet. In sum and substance, what was alleged in the said complaint was as follows:

- (i) that respondent No.2 is a Clearing and Forwarding agent for different pharmaceutical companies;
- (ii) that appellant No.1 hired the services of respondent No.2 as its Clearing and Forwarding agent to carry out various tasks including the storage of medicines in the godown, distribution of the same and corresponding with the Government.
- (iii) that appellant No.1 acquired another company which had taken on rent, a godown situate in the campus of Patna Cold Storage Private Limited;
- (iv) that at the instance of the appellants, respondent No.2 provided manpower for the distribution of the products of appellant No.1 and they worked under the supervision of the managerial staff of appellant No.1;
- (v) that certain service charges were payable to respondent No.2 for the services so rendered;
- (vi) that in the meantime the rental agreement for the godown expired and hence respondent No.2 was not allowed to store the drugs in the godown;
- (vii) that on account of the same, the agreement executed by appellant No.1 in favour of respondent No.2 became inoperative;

- A       (viii) that through a supplementary agreement dated 26.11.2004, new conditions were incorporated;
  - (ix) that at the time of execution of the supplementary agreement, it was assured that on and from 1.04.2005, respondent no.2 will be entitled to get the entire work handed over to them by having the custody of the godown;
  - B       (x) that the appellant No.1 also took a bank guarantee from respondent no.2 in a sum of Rs.5,00,000/-
  - (xi) that without any prior intimation to respondent no.2, the appellants locked up the godown in 2012.
  - C       (xii) that respondent No.2 came to know about a new warehousing agreement entered into by appellant No.1 behind the back of respondent No.2;
  - D       (xiii) that whenever respondent No.2 raised a question of execution of power of attorney in their favour, the appellants threatened to terminate the agency, forcing the respondent No.2 to part with Rs.2,00,000/- per annum;
  - (xiv) that due to the non-execution of the power of attorney from 2004 till 2012, respondent No.2 could not act as C&F agent;
  - E       (xv) that the appellants made use of the furniture and fixtures belonging to respondent No.2 kept in the godown.
  - (xvi) that for appointing them as C&F agent, the appellants demanded Rs.12 lakhs, but respondent No.2 refused to pay;
  - F       (xvii) that on 28.02.2012, the Regional Distribution Manager of appellant No.1 locked the godown and relieved respondent No.2.
  - (xviii) that the furniture and fixtures of respondent No.2 are still inside the godown; and
  - G       (xix) that all the above acts showed that the appellants conspired together and committed the offences of cheating, forgery and breach of trust.
- H       14. A careful reading of the complaint, the gist of which we have extracted above would show that none of the ingredients of any of the offences complained against the appellants are made out. Even if

all the averments contained in the complaint are taken to be true, they do not make out any of the offences alleged against the appellants. Therefore, we do not know how an FIR was registered and a charge-sheet was also filed.

15. The contention of the learned senior counsel for respondent No.2 that the Court has to take note of the final report filed by the police along with the statement of witnesses, could have been accepted by us, if the whole thing had emanated from a First Information lodged with the police. Respondent No.2 actually filed a private complaint under Section 200 Cr.P.C, which was referred by the Court under Section 156(3) to the police. When this complaint itself disclosed nothing more than a commercial relationship which broke, it is not possible for respondent No.2 to enlarge the scope of his complaint by merely adding the language used in the text of the Indian Penal Code.

16. Admittedly appellant No.1 had instituted a civil Suit on the file of the judicature at Bombay and also obtained an order for the appointment of a Court Receiver to take possession of the goods lying in the godown. The appellants have also lodged a criminal complaint, which was refused to be quashed by the High Court of Patna. It is only after the appellants filed a civil suit and a criminal complaint that respondent No.2 chose to file his complaint.

17. The High Court was clearly in error in overlooking the application for bringing on record the subsequent development of the filing of the charge-sheet and the prayer for inclusion of the relief of quashing of the charge-sheet in the original petition.

18. It is too late in the day to seek support from any precedents, for the proposition that if no offence is made out by a careful reading of the complaint, the complaint deserves to be quashed.

19. Therefore, the appeal is allowed. The impugned order of the High Court is set aside and the FIR and the charge-sheet against the appellants are quashed. There will be no order to costs.