IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5032 of 2013

Arising Out of PS.Case No. -2195 Year- 2010 Thana -BHOJPUR COMPLAINT CASE District- -

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1. Dhirendra Kumar S/O Biswanath Prasad Gupta Resident Of Mohalla Karman Tola, Police Station Ara Nawada, District Bhojpur.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Purushottam Singh S/O Late Bipin Bihari Singh Resident Of Village Barahara (Semraon), Police Station Charpokhari, District Bhojpur.

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.
For the Opposite Party/s : Mr. Rina Sinha (App)

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CORAM: HONOURABLE MR. JUSTICE DHARNIDHAR JHA
ORAL ORDER

5 04-05-2015 Heard Shri Baxi S.R.P.Sinha, learned senior counsel appearing on behalf of petitioner and Shri Ranjay Kumar Singh, learned counsel appearing on behalf of the Opposite Party No.2.

The petition seeks quashing of order of summoning dated 13.09.2012 by which Judicial Magistrate, Ist Class, Ara, directed the issuance of summons for appearance of the petitioner before him in Complaint Case No.2195C of 2010 to stand trial for committing offence under Section 138 of the Negotiable Instruments Act.

Most of the facts are undisputed that the petitioner had received a sum of Rs.2,00,000/- from the complainant and in order to paying up the money borrowed from him, he issued a cheque to be drawn at the Bank of India, Branch Ara. The complainant deposited a cheque with his bankers, i.e., Punjab National Bank, Charpokhari Branch, Ara, and it was sent for collecting the cheque amount but the Bank of India refused to make payment of the cheque amount on account of insufficient details provided by the petitioner while issuing the cheque. It appears from the complaint petition that while borrowing Rs.2,00000/- from the complainant, the petitioner has offered one bigha land appertaining to Khata no.19, Khesara no.618 and in lieu of amount but the money was advanced in belief that the petitioner shall pay back the amount.

The complainant sent a notice, as per the complaint petition, requiring the petitioner to pay back the money and having not been paid the money the complainant filed the complaint petition.

The attention of the Court has been drawn to the provisions of Section 138 of the N.I.Act and it was contended that it was not a debt and as if the notice issued by the complainant states it was a gesture of goodwill on the part of the complainant. Considering the ancient good family relationship, he had lent the money to the petitioner. Submission also was that the bouncing of the cheque was not on account of insufficiency of fund or for the reason that the cheque amount had exceeded the money deposited in the account of the petitioner rather could not be honoured by the Bank of India, Ara Branch on account of insufficient details put down while issuing the cheque by the petitioner. On these submissions, it was contended that summoning of the petitioner for committing an offence under Section 138 N.I.Act was outside the facts of the case as those facts did not constitute the said offence.

Shri Ranjay Kumar Singh, learned counsel on behalf of the complainant was submitting that there was initially an offer before this Court also for settlement of the dispute between the parties but that did not come through and it appears that on facts of the case, the petitioner had committed an offence under Section 420 Indian Penal Code.

The petition has been filed on the ground that the facts of the case did not constitute an offence and, as such, the prosecution which was initiated by the order of summoning passed by the learned Magistrate was not sustainable in law. In **AIR 1976 SC 1947 Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi & Ors,** the Supreme Court placing reliance on their earlier decision in **Chandradeo Singh V. Prokash Chandra Bose @ Chabi Bose & Anr. reported in AIR 1963 SC 1430** had laid down certain conditions under which a prosecution has to be quashed. One of the prepositions out of the five laid down in Smt. Nagawwa was that taking the facts stated in the complaint petition to be true on their face value, if no offence was made out, then the prosecution had necessarily to be terminated.

On considering Section 138 N.I.Act what appears necessary to be alleged and shown to the satisfaction of the Magistrate in order to establishing sufficiency of the grounds for proceedings against an accused, was that the money must have been borrowed in the nature of a debt or could have created some other liability against the accused. The other requirement is that a cheque which had been issued in order to liquidating the debt or to discharge the other liabilities should be dishonoured on account of insufficiency of the fund or because the cheque amount was exceeding the amount available in the account credit of the account holder accused. The other ingredients which are required further to be shown are that the cheque ought to have been presented within six months or within the period of its validity which ever is earlier and there must have been a demand made by the payee or the holder in due course of the cheque to pay up the cheque amount and that payment must be made within 30 days of the date on which the demand had been made. As regards the formalities of making demand, the very provision lays down that a notice could be given and the payment has to be made within 15 days from the receipt of the notice as appears from Section 138 (c).

On perusal of the notices issued by the petitioner, what I find is that the cheque had not been honoured because there was no sufficient fund in the account of the petitioner or in other words, the value of the cheque was exceeding the amount lying in the credit balance of the petitioner's account rather the cheque was not carrying required details so as to be honoured by the payee banker. Thus, the most important ingredient of insufficiency of the fund or the value of the cheque exceeding the amount available in the account of the accused appears not available under the facts of the case. So far as the other ingredients of not making the demand is concerned, the notice dated 08.10.2010 issued under the signature of Shri Neeraj Kumar Singh, Advocate requested the petitioner for an out of Court settlement on the ground that the two families had been old friends and were carrying on very good relationship and further that the amount was advanced by the complainant in honour of the relationship and that the complainant was not bent upon prosecuting the petitioner by following the right procedures because the relationship between the two families- to borrow the words from the notice dated 08.10.2010-cannot be unnoticed and that was the reason that the client of Shri Neeraj Kumar Singh was giving a chance to the accused to settle the account. It may be construed as a demand and it may also be construed as a request to settle the account. Even assuming that it was a demand as per Section 138 N.I.Act, then it was not mentioned in it as to under what period the demand should be mat and the payments should be made to the complainant. These are some of the reasons upon which the Court finds it rightly submitted that the facts did not constitute an offence under Section 138 N.I.Act as a result of which the petition succeeds and the order issuing summons to the petitioner dated 13.09.2012 passed in the above noted complaint petition is hereby quashed.

Shri Ranjay Kumar Singh, appearing for the complainant was requesting me to observe that an offence under Section 420 Indian Penal Code was made out. This Court in the nature of the proceedings presently being handled by it, can not direct further enquiry in the matter and rather grants liberty to the complainant to knock at the right doors of the judiciary by filing a fresh complaint for the appropriate offence which may be instituted by the facts of the case.

(Dharnidhar Jha, J)

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