

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5094 of 2013

Arising Out of PS.Case No. -1363 Year- 2011 Thana -
COMPLAINT CASE District- -

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1. Mohan Himmatsingka S/O Late Jivan Himmatsingka Director,
Shankar Motors Ltd. Gulab Bagh, Barsoni(Purnea), P.S.&Distt-
Purnea

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ashok Gupta S/O Rajendra Prasad Gupta R/O Machhamara
Ward No.32, P.S.&Distt-Kishanganj

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh,
Advocate.

For the Opposite Party/s : Mr. Suresh Pd. Singh (App)

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CORAM: HONOURABLE SHRI JUSTICE
DHARNIDHAR JHA
ORAL ORDER

8 04-05-2015

Heard.

The petitioner is the Director of M/S Shankar Motor Limited an authorized dealer of Tata Commercial Vehicle. The petitioner seeks the quashing of order of summoning dated 27.06.2012 passed by Judicial Magistrate, Ist Class, Kishanganj in Complaint Case No.C1363 of 2011 by which he has been directed to appear and be tried for an offence under Section 417 IPC.

The petition of complaint vividly states that it was



Pradeep Ojha who had contacted the complainant under a promise that he will get a Tata Magic Vehicle for him in 15-20 days and the complainant had advanced to him Rs.55,000/- in cash and a draft of Rs.25,000/- bearing no.165888 dated 29.04.2011 and an additional amount of Rs.2,000/- towards office expenses. The complainant stated that the said Pradeep Ojha handed over to him the photo copy of the draft bearing his signature in token of having received the draft, but the complainant did not get any vehicle in spite of the fact that he had been shown the establishment of M/S Shankar Motors Limited by the accused. When he gave a notice to the accused persons, he came to know in response to that notice that the said agency had not received any money nor they were under any obligation to supply a vehicle of complainant's choice to him. It is specifically stated by the complainant that he had been defrauded by Pradeep Ojha and others.

It is by now a well settled position of law that treating the statements made in the complaint petition to be true on their face value, if no offence is made out against an accused, the prosecution as against him or in its entirety has to be terminated.

On perusal of the complaint petition as also by going through the statement of three witnesses, copies of which have been placed on record, this Court finds that there is not even an

iota of allegation against the petitioner that he had in any way or manner acted in defrauding the complainant Ashok Gupta. In fact, all allegations are directed or centered around Pradeep Ojha who appears the chief architect of the entire fraud.

Considering the lack of material and substantial facts as regards the complicity of the present petitioner, the summoning order as against the present petitioner Mohan Himmatsingka is hereby quashed by allowing the present petition. The summoning order as against Pradeep Ojha shall stand.

(Dharnidhar Jha, J)

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