

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20149 of 2013

Arising Out of PS.Case No. -2074 Year- 2011 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

- =====
1. Amit Kumar Nirala @ Amit Kumar S/O Rajdeo Rai Resident Of Village- Kiratipur, Netar, P.S- Bhagwanpur, District- Vaishali.
 2. Jitendra Kumar @ Judge Saheb S/O Rajdeo Rai Resident Of Village- Kiratipur, Netar, P.S- Bhagwanpur, District- Vaishali.
 3. Vishal Kumar @ Babu Saheb S/O Babujee Rai Resident Of Village- Kiratipur, Netar, P.S- Bhagwanpur, District- Vaishali.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Satish Chandra Choudhary S/O Late Pasupatinath, West of Navin Talkies, Lichhavi Nagar, House No. 30, Hajipur, Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. BindhyKeshri Kumar, Sr.Adv. with

Mr. Sunil Kumar Singh, Advocate

For the O.P.No.2 : Mr. Krishna Nand Jha, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 28-07-2015

Heard learned counsel for the petitioners, learned counsel for O.P.No.2 as well as learned Additional public prosecutor.

The instant prosecution has been launched on account of non-honouring of a cheque issued by petitioner no.1 Amit Kumar Nirala @ Amit Kumar for purchase of scientific equipments from O.P.No.2/complainant and further, the cheque issued by petitioner no.1 bounced for which notice was given to the petitioner no.1 Amit Kumar Nirala @ Amit Kumar and as, out of statutory period, the amount was not paid, the instant complaint has been filed. The learned Magistrate, initiated an inquiry under

Section 202 of the Cr.P.C. and after completing the same, vide order dated 01.9.2012 passed in Complaint Case No.2074 of 2011 (Trial No.4759 of 2012), cognizance of an offence punishable under sections 420, 120B of the Indian Penal Code and Section 138 of N.I. Act has been taken. Simultaneously, all the petitioners have been summoned to face trial.

Before adverting to the merit of the case, it is apparent that the case of petitioner nos. 2 and 3 are quite distinguishable in the background of the fact that apart from suffering, complaint petition under vagueness, their complicity is further, been negatived by Annexure-8, an advocate notice served by the O.P.No.2 upon petitioner no.1 Amit Kumar Nirala @ Amit Kumar where-from, more particularly, paragraph no.2, it is apparent that complainant/O.P.No.2 had confined presence of petitioner no.1 Amit Kumar only at his shop and further he alone had received the scientific equipments as well as handed over the cash appertaining to Rs.50,000/- and has issued cheque for the remaining which, bounced.

Accordingly, order of summoning these petitioners, namely, Jitendra Kumar @ Judge Saheb and Vishal Kumar @ Babu Saheb are hereby quashed. Petition to their interest is allowed.

Now, coming to the case of petitioner no.1, it has been submitted on behalf of the petitioner that there was an agreement amongst them (Annexure-3) and so, in worst case, it happens to be an event to be guided by the terms and conditions of the agreement and any violation on that very score would attract civil litigation only. It has further been submitted that from the



complaint petition itself, it is evident that petitioner no.1 had appeared at the shop for purchase of scientific equipment and for that negotiated terms were finalized, part payment was made, and issued cheque for guarantee. Therefore, it happens to be out and out a business transaction and for that, the proper remedy was to launch a money suit for realization of due amount, if any.

It has also been submitted that the real fact is that the aforesaid cheque was handed over to the O.P.No.2/complainant in lieu of guarantee and as, in terms of agreement the O.P.No.2/complainant failed to supply the items for which petitioner had ordered and as the O.P.No.2/complainant intended to take undue advantage on the basis of the aforesaid cheque, which, on account of repeated requests, he failed to return to the petitioner no.1, hence, the petitioner informed the Bank to stop the payment. Subsequently thereof, filed complaint case bearing Complaint Case No.2173 of 2011 on that very score (Annexure-6). Hence it is a fit case for invoking inherent jurisdiction for quashing the order of cognizance as it happens to be sheer abuse of power.

Learned counsel for the O.P.No.2 has submitted that from Annexure-6 itself, it is apparent that petitioner no.1 had admitted issuance of cheque and further, there was some sort of activities amongst the party relating to supply of scientific equipments and for that, part payment was also made. It has also been submitted that from Annexure-6, petitioner no.1 had also perceived dishonest intention even at the time of negotiation. Therefore, to test the veracity, trial should be allowed to proceed as in the counter case also, O.P.No.2 has been summoned.

Learned Additional Public Prosecutor submitted that on account of presence of prima facie material, the learned lower court was justified in summoning at least relating to petitioner no.1.

After appreciating the rival contentions it is apparent that matter requires full fledges trial because of the fact that it happens to be question of fact which could be determined only in trial as has been held by the Apex Court in 2015 Cr.L.J. 2408 (HMT Watches Ltd. Vs. M.A. Abida & anr.

That being so, the instant petition is found fit to be rejected with regard to petitioner no.1 and accordingly, it is rejected.

(Aditya Kumar Trivedi, J)

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