

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34812 of 2012

Arising Out of PS.Case No. -1542 Year- 2011 Thana -null District- PATNA

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1. Vijay Kumar Gaba Son Of Shri Prem Narayan Gaba Resident Of 504, Julien Alps, Bhakti Park, Wadela East, P.S.- Wadela, District- Mumbai

.... Petitioner/s

Versus

1. The State Of Bihar
2. Madan Mohan Sharma Son Of Late L.B. Singh Resident Of Rajbanshi Nagar, (Road No. 1) Extension, P.S. Shastrinagar, Town And District Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kejriwal, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP
For Opposite Party No.2 : Mr. Manish Kumar No.2, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 20-04-2015

The Petitioner seeks quashing of the order dated 16.7.2012, by which the 4th Additional Sessions Judge, Patna in Criminal Revision No.878 of 2011 has set aside the order dated 15.10.2011, by which the Judicial Magistrate, 1st class, Patna had dismissed Complaint case No.1542C of 2011.

The case of the Complainant is that sometime in the year 2006 the Petitioner approached him and induced him to invest in a certain company, at which he gave him altogether Rs.5.85 crores through various cheques. However, he did not get benefit of his deposits. When he enquired from the Petitioner, he learnt that he had been cheated. The Complaint was dismissed on the ground that he had

not produced any documents. Being aggrieved with the dismissal of the Complaint for wrong reasons, he approached the Revisional Court, which without noticing the Petitioner set aside the order of dismissal and remanded the matter to the court below, upon which fresh order of cognizance was passed.

The Counsel for the Petitioner submits that he should have been heard under Section 398 Cr.P.C. before the matter was remanded to the court below and the Revisional Court having not done so the order is unsustainable and consequently the order of cognizance is also bad in law. The further submission is that the Petitioner has filed a case before SEBI against the Master Capital Services Limited, which was the company in which the Complainant had invested and same parties are also before the Arbitrator where the matter is presently pending.

On the other hand, the Counsel for the Complainant submits that since the Complaint had been dismissed for non est. reasons the Revisional order was proper and even if it was set aside without hearing the Petitioner.

I find from the narrative of the Complaint that there is no doubt that the Opposite Party No.2 had levelled an allegation of having handed over cheques to the Petitioner for investment, but nowhere has he averred that the cheques were in his favour. In fact I

am quite impressed by the pertinent questions of the Court which had led to the dismissal of the Complaint inasmuch as he had asked the Complainant specifically as to whether he had entered into an agreement with the Petitioner in regard to the aforesaid transactions and also as to whether the cheques had been given in favour of the Petitioner, to which both of queries the replies were in the negative.

Having considered that the Petitioner was merely a financial advisor and if at all there is a dispute it is between the Company and the Complainant, I am inclined to quash the proceeding. Hence, the application is allowed and the proceeding including the order dated 16.7.2012 passed by the 4th Additional Sessions Judge, Patna in Criminal Revision No.878 of 2011 is hereby set aside so far as the Petitioner is concerned.

However, this order shall not prejudice the Complainant in any manner with regard to his claims.

(Anjana Prakash, J)

Narendra/-

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