

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36567 of 2012

Arising Out of Complaint Case No. -763 Year- 2010 District- BHAGALPUR

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Kailash Prasad Tiwary, s/o late Chandar Prasad Tiwary, Resident Of Mohalla- Lal Darwaza, Munger, P.S.- Kotwali, District- Munger

.... Petitioner/s

Versus

1. The State Of Bihar
2. Keshri Kumar Singh, S/O Late Ramayan Singh, Resident Of Mohalla- Kila Ghat Sarai, Bhagalpur, P.S.- Kotwali, District- Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Jha, Adv.

For the State : Mr. Nagendra Pd., A.P.P.

For the Opposite Party No. 2: Mr. Rakesh Kumar Srivastava, Adv.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 08-05-2015

Heard learned counsel for the Petitioner and the State.

The Petitioner seeks quashing of the order of cognizance dated 3.8.2010 passed by the Judicial Magistrate, 1st Class, Bhagalpur, in Complaint Case No. 763 of 2010.

The case of the Complainant is that the Petitioner had loaned a certain amount of money to the accused persons who on repeated demands, did not refund the same.

It has been submitted on behalf of the Petitioner that even conceding the allegation in the Complaint, no Criminal offence is made out inasmuch as admittedly it was a friendly loan between the Parties. Moreover, for the same cause of action, the Complainant has

filed a money suit.

The counsel for the Complainant submits that it was on the assurance of the accused persons that he parted with a huge amount of money and he had borrowed the same so with intent to cheat him.

Having considered the facts of the Complaint, I would be inclined to agree with the submission raised on behalf of the Petitioner.

Hence, the application is allowed and the entire Proceeding including the order dated 3.8.2010 passed by the Judicial Magistrate, 1st Class, Bhagalpur, in Complaint Case No. 763 of 2010, is hereby set aside.

However, this order shall not prejudice any party in any manner.

Also, the Presiding Officer before the Money Suit No. 4 of 2012 pending, is directed to conclude the Proceeding positively within a period of four months from the date of receipt of this order without granting unnecessary adjournment to any Party.

(Anjana Prakash, J)

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