

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13479 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- SAHARSA

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Ahmad Sah @ Ahmad Shah @ Ahmad Prasad Sah son of Musraf Sah, resident of village- Mahua Bazar, Police Station- Basnahi, District- Saharsa

.... Petitioner/s

Versus

1.The State of Bihar

2. Ramesh Kumar Agarwal son of Shiv Prasad Agarwal, M/S Arun Kumar, Ramesh Kumar, resident of Kapda Patti, P.S. & District-Saharsa

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abdul Mannan Khan, Advocate
: Mr. Binay Kumar, Advocate
: Mr. Md. Najmul Hoda, Advocate
For the State : Mr. Nand Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 19-05-2015

Despite valid service of notice to opposite party no.2, he has chosen not to contest the matter.

2. Heard learned counsel for the petitioner and learned counsel for the State.

3. In the present application filed under section 482 of the Code of Criminal Procedure, the petitioner is aggrieved by order dated 4.6.2006/5.6.2006 passed by the learned Sub Divisional Judicial Magistrate, Saharsa in Complaint Case No.1345C of 2005 whereby the learned Magistrate has taken cognizance of the offences punishable under sections 406, 420 and 504 of the Indian Penal Code.



4. Learned counsel for the petitioner submits that from bare perusal of the statement made in the complaint petition, it is manifest that it is a pure and simple case of money claim. The allegation against the petitioner is of taking goods on credit from the complainant and the price of which has not been paid by him as yet leading to the institution of the complaint case. He further submits that although initially the complaint was instituted for an amount of Rs. 1,31,275/- but in the statement made on solemn affirmation, the complainant himself has admitted that only Rs.11,155/- is now due with the petitioner. He, thus, submits that even if allegation is accepted to be true on its face value, yet it remains a money dispute.

5. Learned counsel for the State has contested the matter. He has submitted that the allegations made in the first information report do attract ingredients of the offence punishable under sections 406 and 420 of the Indian Penal Code. The probative value of the defence is not to be considered at this stage for quashing the prosecution case. As the learned Magistrate has found a *prima facie* case against the petitioner, he may file an application before the court below for discharge at an appropriate stage but at this stage, this Court would not sift and weigh the evidence.

6. I have heard the parties and perused the record.

7. It is well settled that the offence of cheating would be

constituted when an accused has fraudulent or dishonest intention at the time of making promise or representation.

8. If the dispute between the parties is essentially a civil dispute resulting from a breach of contract, it would not constitute the offence of cheating. Merely because part of the amount due against a person is not paid, the case would not attract the ingredients of the offence of criminal breach of trust.

9. In **Hridaya Ranjan Prasad Verma and Others Vs. State of Bihar and another reported in (2000)4 SCC 168**, the Hon'ble Supreme Court has observed that in order to hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making promise.

10. In **Anil Mahajan Vs. Bhor Industries Ltd. and another reported in (2005) 10 SCC 228**, the facts of the case before Hon'ble Supreme Court was that the complainant delivered 1,56,94,120/- reels of steel grip tapes valued at Rs.3,38,62, 860/- to the accused during the period 19.8.2000 to 20.11.2000 and out of this amount, the accused made only part payment of Rs.3,05,39,086/- leaving the balance amount of Rs.33,23,774/-. The allegations were that after making this payment, the accused did not make further payment despite repeated demands. In that case after hearing the parties the Hon'ble Supreme Court held that the complainant has no



case that the accused obtained articles by any fraudulent inducement or by willful misrepresentation. It further held that though the accused committed default in payment of some installments but it is clear from the complaint that it is a simple case of civil dispute between the parties and the requisite averments to make out a case of cheating were absolutely absent.

11. In the present case, from a bare reading of the averments in the complaint and the statement of the complainant on solemn affirmation even if the entire allegations made in the complaint are taken to be true, ingredients of intentional deception or of criminal breach on the part of the petitioner right at the beginning of negotiations for taking goods on credit from the complainant has neither been expressly stated nor indirectly suggested. All that the complainant has alleged against the petitioner is that though the petitioner received certain goods on credit from the complainant but the full price of the same has not been paid by him.

12. Apparently, substantial amount was paid by the petitioner to the complainant and only Rs.11,155/- was due to be paid which clearly shows that part payments were made by the petitioner. There is absolutely no material to show that there was any inducement by the petitioner. All that can be said against the petitioner is that he failed to fulfil the promise made by him which can be said to be

breach of contract or breach of agreement but it cannot be a criminal breach of trust making him criminally liable.

13. On consideration of the entire facts and circumstances of the case, I am of the considered opinion that it is a case in which allowing the prosecution to continue any more would amount to gross abuse of process of the court.

14. In that view of the matter, the impugned order dated 4.6.2006/5.6.2006 passed by the learned Sub Divisional Judicial Magistrate, Saharsa in Complaint Case No.1345C of 2005, is hereby quashed. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

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