

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 36183 of 2010

Arising out of P.S. Case No. -1621(C) Year- 2009 Thana -
Complaint District- SAHARSA

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Vijay Kumar Sah, Son of Sri Bangali Sah, Resident of Ratu Road,
Pandra-P.O. Hehal, P.S.-Sukhdeo Nagar, Dist.-Ranchi (Jharkhand).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Dhirendra Kumar Jha, Son of late Gita Jha, Resident of Sugma,
O.P. Banamad Ethari, P.S.-Sakhua, Dist.-Saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Tilak Sao, Adv.

For the Opposite Party/s : Mr. Shailendra Kumar, APP.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 03-02-2015

The Petitioner seeks quashing of the entire proceeding including the order of cognizance dated 23.11.2009 passed by the Judicial Magistrate, 1st Class, Saharsa in Complaint Case No. 1621(C) of 2009.

The case of the Complainant is that he was induced to invest some money in the business of the Accused subject to refund after a year in lieu of which he would get Rs. 8,000/- as salary. An agreement was prepared between the parties whereafter the Complainant allegedly paid a total of Rs. 3,36,639/- to them. Subsequently, the Complainant asked the Accused to refund the amount at which the Petitioner allegedly gave him some cheques which were returned.

It has been submitted on behalf of the Petitioner that the admitted position is that the cheques were not dishonoured



and, hence, no offence under the NI Act is made out. The further submission is that before this Complaint was instituted on 06.10.2009 the Petitioner had filed a Complaint against the Complainant on 24.09.2009 with regard to him having misappropriated some cheques which were lying with him in trust. Soon thereafter the Petitioner informed his bank about the missing cheques for which reason the cheques were returned to the Complainant as alleged by him in the Complaint Petition. Still earlier the sister of the Petitioner had filed a First Information Report against the Complainant for having misused her ATM Card. The submission is that in this background evidently the present Complaint has been filed only with a view to create a defence and even conceding the allegation in the Complaint Petition no offence under Section 420 IPC is made out.

On the other hand, Counsel for the Complainant submits that since the Petitioner had been cheating the Complainant in various ways continuously he had filed two Complaints against him this being the second in number and, hence, he should be put on trial.

Having gone through the facts of this Complaint as well as the background facts, I would be inclined to hold that the present Complaint has been filed as a backlash to the prosecution initiated by the Petitioner and the allegations in the Complaint Petition do not make out an offence of cheating since

the essential ingredients of the offences is missing.

Hence, the application is allowed and the entire proceeding including the order of cognizance dated 23.11.2009 passed by the Judicial Magistrate, 1st Class, Saharsa in Complaint Case No. 1621(C) of 2009 is, hereby, set aside.

The Application stands allowed.

(Anjana Prakash, J)

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