

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32077 of 2012

Arising Out of PS.Case No. -397 Year- 2004 Thana -null District- BHAGALPUR

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1. Tej Narayan Ram
 2. Gopal Prasad

Both S/O Late Banshi Ram resident of village Bhagariya, Police Station Muharnal in the district of Godda (Jharkhand), presently residing in house No. 90, Ganeshdeo Marg, Banswari, Maharajganj, Chakrapath, Kathmandu (Nepal).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Uttam Kumar Gupta, s/o late Ram Krishna Gupta, R/O M/S Ushpa Impex, Rai Gopal Lane Naya Bazar, P.S.Kotwali, District Bhagalpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anita Kumari Singh, Adv.
Mr. Prabhu Narayan Sharma, Adv.
Mr. Bimal Kumar No. 2, Adv.
For the State : Ms. Mina Singh, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
ORAL JUDGMENT
Date: 05-05-2015

Heard learned counsel for the Petitioners and the State.

The Petitioners seek quashing of the order of cognizance dated 8.12.2009 passed by the Chief Judicial Magistrate, Bhagalpur, in Bhagalpur Kotwali P.S. Case No. 397 of 2004.

In view of the nature of dispute, this Court had repeatedly directed both the Parties to resolve their dispute but, it could not be done. Both the Parties are claiming dues against each other. In such a situation, there is no possibility of an amicable solution.



The case of the Informant is that he was Proprietor of M/s. Usha Impex and was engaged in production of silk cloth whereas the accused were engaged in purchase jointly and sale at different places. The Informant had good relations with the Petitioners and, hence, he went ahead with the business dealing with them. In course of the same, unfortunately, a huge bill of around Rs.7,00,000/- became due but the Petitioners did not make payments. When he requested them to do so, they issued post dated Cheques on 2.4.2004, 8.4.2004 and 13.4.2004 respectively which were dishonoured. The Petitioners were then sent a legal notice on 26.4.2004 but they refused to make payment and, hence, the present First Information Report.

The counsel for the Petitioners submits that in the facts of the case, no offence of cheating is made out and since no cognizance under Section 138 of Negotiable Instrument Act has been taken, the Prosecution be quashed.

On the other hand, the Informant submits that since all ingredients of a criminal offence are made out, the Petitioners should be put on trial.

Having considered the rival submission, I do not see any merit in the application, it stands dismissed.

The Trial Court shall consider at the appropriate stage as to whether in the facts of the case, Section 138 of Negotiable and

Instrument Act is made out.



(Anjana Prakash, J)