IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38770 of 2012

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1. Binod Baitha S/O Vishwanath Baitha @ Acharya Vishwanath Baitha Resident Of Village Shreenagar, P.S. Phulwaria, District Gopalganj, At Present Posted As Manager Of Petrol Pump At Meerganj Siwan Main Road, P.S. Meerganj, District Gopalganj.

.... Petitioner/s

Versus

1. State Of Bihar.
2. Lalita Devi W/O Ganga Kumar Resident Of Village Jigna Gopal, P.S. Meerganj, District Gopalganj.

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Radha Krishna Singh
For the Opposite Party/s : Mr. Hriday Pd. Singh (App)

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

5 07-05-2015 Heard.

The petition seeks the quashing of order dated 10.05.2012 by which the Chief Judicial Magistrate, Gopalganj, took cognizance of offences under Sections 420,406 and 468 Indian Penal Code and Section 138 of the Negotiable Instrument Act and directed issuance of summons for appearance of the petitioner. The cognizance order was passed on perusal of the police report on facts constituting those offences.

It was through a written report presenting to the Officer-in-Charge of Mirganj police station in the district of Gopalganj that the case was registered and it was investigated into. It was stated by the informant that the petitioner who was running a petrol pump approached the informant with a request to pay to him Rs.5,00,000/- so as to financing his business in petroleum which was at the verge of being closed down and further promised that he would pay back the money by check. The lady advanced the money and in due course, the petitioner also issued the cheque bearing no.CCB00035-0548592 to be drawn on account no.11740442898 which account was held by the petitioner in the State Bank of India, Narjhania branch. The lady went for collecting the cheque and submitted it in the State Bank of India, Mirganj but she received communication that the cheque could not be honoured due to insufficiency of funds. The lady filed the report as noted above and the case was investigated into to end in the submission of the chargesheet.

The contention of the petitioner was that the cognizance of offence under Section 138 of the Negotiable Instrument Act (N.I.Act) was bad on the face of it as the very provision of Section 138 N.I. Act indicates that a petition of complaint has to be filed after following certain procedures. No such case could be instituted with the police. Submission was also that once the cognizance under Section 138 N.I.Act was held to be bad the whole cognizance order was suffering from incurable defect and, as such, the prosecution has to be quashed.

It was rightly contended that the cognizance order is bad as regards the same being in respect of offence punishable under Section 138 of the N.I.Act because the very provision of the N.I.Act clearly points out that a complaint petition has to be filed and that too after observing certain formalities set down by the legislature in the very provision. Thus, the order of the learned Magistrate taking cognizance of offence under Section 138 N.I.Act appears patently wrong and bad.

As regards the order taking cognizance of offences under Sections 420, 406 and 468 of the Indian Penal Code are concerned, this Court again failed from being convinced as to how the facts of the case could constitute an offence under Section 468 of the Indian Penal Code as there was no forgery alleged. It was mere issuance of a cheque in favour of the informant which was sent for collection which could not be honoured by the bank in want of funds. There was no allegation nor there could be any under the above facts that an offence under Section 468 Indian Penal Code was constituted. Thus, the order of cognizance dated 10.05.2012 as regards the taking of cognizance of offence under Section 468 Indian Penal Code also appears bad.

However, as regards the offences under Section 420 or 406 Indian Penal Code, the Court finds that the facts are as tale tell to constitute those offences. Cheating is one ingredient of the offence under Section 420 IPC and that on account being cheated or defrauded the person should have voluntarily delivered any property valuable security, etc. Here in the present case, the petitioner had impressed upon the lady informant after pointing out to her the virtual collapse of his petroleum business in lack of funds to advance to him Rs.5,00,000/-. That fact may not sufficiently give an indication that the criminal intent was there in the very mind of the petitioner at that particular stage, but as soon as he had issued the cheque knowing fully well that there was no fund in his account over which the cheque was to be drawn, the very existence of the criminal intent from the very beginning has to be automatically presumed. The cheque bounced and as appears from the facts of the case, the payment of the money still eludes the informant. These are the circumstances which justify the taking of cognizance of offences under Sections 420 and 406 Indian Penal Code.

In the result, the order dated 10.05.2012 is set aside to the extent as it relates to taking cognizance of offences under Section 468 Indian Penal Code and Section 138 N.I.Act. As regards offences under Sections 420 and 406 Indian Penal Code, it is found sound and good permitting the trial court to proceed with the trial. The petition fails, as such, the same is dismissed.

Let the trial court proceed with the trial.

(Dharnidhar Jha, J)

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