

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.12803 of 2013

Arising Out of PS.Case No. -3580 Year- 2007 Thana -SARAN COMPLAINT CASE District- -

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Ranbir Singh son of Late Kamal Nath Thakur, resident of village - Dudahpura , P.S.
and District - Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Anand Kumar Rai son of Shri Nagendra Rai, Mohalla- Dahiyawan, Tola-
Sadhnepuri, P.S.- Chapra Nagar, District - Saran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	: Mr. Amresh Kumar Sinha, Advocate
	: Mr. Nagadeo Choubey, Advocate
For the Opposite Party No.2	: Mr. Hari Shankar Roy, Advocate
For the State	: Mrs. Sucheta Yadav, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 13-07-2015

Heard learned counsel for the petitioner, learned counsel for
the State and learned counsel for opposite party no.2.

2. This application under section 482 of the Code of
Criminal Procedure (for short 'the Code') is directed against the order
dated 26.3.2008 passed by the learned Judicial Magistrate, 1st Class,
Chapra, in Complaint Case No. C3580 of 2007 whereby he has issued
process against the petitioner after taking cognizance of the offences
punishable under sections 406 and 420 of the Indian Penal Code.

3. In sum and substance, the case of the complainant is
that he was doing the business of plying of motor vehicle. He had
gone to Muzaffarpur for depositing tax of a bus bearing registration
no.BR 06P 1916. After depositing tax, he went to the petitioner



(accused) and told him that he has a requirement of a second hand truck. The petitioner advised him to go to one Madhuri Sinha and get the truck after negotiation as Madhuri Sinha has got a second hand truck which was to be sold. Thereupon, the complainant went to said Madhuri Sinha and asked her about the truck which was to be sold. She showed the truck bearing registration no. JH 2A 9186 to the complainant. Thereupon, in negotiation between the complainant and the accused Madhuri Sinha, the consideration amount of the truck was fixed at rupees three lakh eighty five thousand. Out of this, one lakh was to be given by way of Bank draft in favour of M/s Sarachi Security Ltd. and the rest amount was to be given in cash. On 12.5.2005, the complainant got issued two Bank drafts from Central Bank of India in favour of M/s Sarachi Security Ltd. Each draft was for Rs. 49,999/- and thus a total value of both the Bank drafts stood at Rs.99,998/-. Thereupon, the complainant informed both the accused persons that the Bank draft for the said amount is ready and the rest amount in cash is also ready. The petitioner asked the complainant to give the same to the Madhuri Sinha. On establishing contact with Madhuri Sinha, she informed the complainant that she has to come to Chapra for some urgent work and she will collect the draft and cash from there. Later on, on 14.5.2005, Madhuri Sinha came to Chapra Bus Depot by her own Maruti car and the complainant handed over the two Bank drafts and handed over cash worth rupees fifty five

thousand. The rest amount of rupees two lakhs thirty thousand was agreed to be given within ten days through the petitioner. Thereafter, Madhuri Sinha took away the money and the Bank draft and went to Muzaffarpur.

4. It has been further alleged in the complaint that the petitioner informed the complainant on phone that Madhuri Sinha will be given the rest outstanding amount and the complainant may take the truck from her. Thereafter, on 22.5.2005, the complainant went to the house of Madhuri Sinha and offered her to come to Muzaffarpur for getting the cheque of the rest outstanding amount. Thereupon, Madhuri Sinha said that she does not want to sell the truck now. On the point of returning of amount already paid to her, she asked for two months time. The complainant agreed for the same. However, despite giving several opportunities to Madhuri Sinha, she has not returned the said amount to the complainant. The complainant, therefore, asserted that both the accused persons had entered into a criminal conspiracy and had committed breach of trust against the complainant.

5. The complainant-opposite party no.2 has supported his case in statement made on solemn affirmation. On behalf of the complainant, three witnesses, namely, Guddu Singh, Raghunath Singh and Nandlal Singh were examined during enquiry conducted under section 202 of the Code.



6. Considering the allegations made in the complaint petition, statement of the complainant recorded on solemn affirmation and the statements of the witnesses recorded under section 202 of the Code, the learned Judicial Magistrate 1st Class, Chapra, Saran, vide his order dated 26.03.2008, summoned the petitioner and co-accused Madhuri Sinha for facing prosecution under sections 406 and 420 of the Indian Penal Code. The aforesaid order dated 26.03.2008 is under challenge before this Court in the present application.

7. It has been contended that the petitioner has unnecessarily been dragged in the instant case. In his statement made on oath, the complainant has made only a vague allegation that when he approached the petitioner for purchase of a second hand truck the petitioner disclosed that Madhuri Sinha has got a second hand truck which was to be sold. Apart from this, there is no other allegation made in the statement of the complainant recorded on oath. He has further contended that at the relevant time the petitioner was posted as Assistant Branch Manager of M/s Sarachi Security Limited, a company incorporated under the Indian Companies Act, 1956 (for short 'the Company') at its Muzaffarpur Branch. The said Company had financed the aforesaid truck (Registration No. JH 02A 9186) to co-accused Madhuri Sinha. In this regard, he relies on a lease agreement, which has been brought on record in the present application. A perusal of the said agreement would show that the



same was between the Company and aforesaid Madhuri Sinha. It was made on 31st July, 2003 and was to be terminated on 1st June, 2010. Under the contract, the lessee (Madhuri Sinha) was required to make the payment of monthly installments to the Company. However, the installments could not be paid and the lessee became a defaulter. Thereupon, the Company filed an arbitration case before the Arbitrator as agreed in the lease agreement. Pursuant to the arbitration proceeding, an award was pronounced in favour of the Company and the liability of the lessee was determined as Rs.5 lakhs with interest @ 18% per annum, vide award dated 20th March, 2007. He has further contended that as per the policy of the Company and as per the nature of the agreement between the Company and the co-accused Madhuri Sinha no permission could have been granted to the lessee to sell the vehicle in question. As such, the story that the petitioner asked the complainant to go for such negotiation for sale is patently absurd and inherently improbable.

8. On the other hand, learned counsel for the complainant-opposite party no. 2 has submitted that when the complainant approached the petitioner in order to purchase a second hand truck, it was the petitioner who referred him to approach the co-accused Madhuri Sinha. After negotiation, payments were made in cash and by Bank drafts to Madhuri Sinha with tacit consent of the petitioner. Subsequently, Madhuri Sinha refused to sell the vehicle. He has

submitted that it is a gross case of meeting of mind between the petitioner and co-accused Madhuri Sinha in order to dishonestly allure the complainant to buy a second hand truck as a result of which the complainant has been cheated and accused persons have dishonestly misappropriated Rs.1, 54,998/-.

9. I have heard the respective counsel for the parties and have carefully perused the materials brought on record.

10. In his statement made on oath, the complainant has stated that he out of his own went to meet the petitioner and expressed his desire to purchase a second hand truck. The petitioner advised him to contact co-accused Madhuri Sinha in this regard. Thereafter, the entire allegation is confined against Madhuri Sinha and there is no allegation that the petitioner either received any amount from the complainant or induced him in any manner to purchase the second hand truck in question. It is seen that the complainant has vaguely alleged that the accused persons refused to return the money taken from him when Madhuri Sinha refused to sell the truck in question.

11. It would appear that as per the nature of agreement between the company and the accused Madhuri Sinha, no permission could have been granted to the lessee to transfer the vehicle in question to a third party. As such, the story that the petitioner, who was an Assistant Branch Manager of the company, would have asked

the complainant to go for such negotiation for sale of the vehicle seems to be patently absurd and inherently improbable.

12. In any event, no loan could have been advanced for a second time on a vehicle on which the loan was advanced earlier and the earlier loan was still to be liquidated. It defies all common sense, reason and logic that a vehicle already under loan and that the loan becoming a bad debt would have become the subject matter of the second loan.

13. Evidently, the story made out in the complaint petition seems to be a cock and bull story so far as its re-finance by the Company is concerned. Moreover, the substance of the grievance in the complaint petition is that the Bank draft to the tune of Rs.99998/- and cash amount of Rs.55,000/- were given to Madhuri Sinha for purchase of truck in question and that despite the fact that transaction of sale-cum-purchase has not rectified, the money given by draft and cash to Madhuri Sinha has not been returned to the complainant. As such, the aspect of entrustment and cheating cannot be made in the absence of any specific agreement against the petitioner.

14. Admittedly, the petitioner was, at the relevant time, working as Assistant Manager in the Company and, as such, had no personal interest in the matter.

15. On careful perusal of the statement of the complainant, it is apparent that no *mens rea* can be attributed against the petitioner

in the alleged transaction between the complainant and Madhuri Sinha. There is also no allegation of making any payment to the petitioner by the complainant. In that view of the matter, I find that the ingredients of the offences under sections 406 and 420 of the Indian Penal Code are clearly wanting in the present case as against the petitioner.

16. On the facts and in the circumstances of the case, the impugned order dated 26.3.2008 passed by the learned Judicial Magistrate 1st Class, Chapra, Saran cannot be sustained. Accordingly, the aforesaid order dated 26.3.2008 passed by the learned Judicial Magistrate 1st Class, Chapra, Saran in Complaint Case No. C 3580 of 2007 corresponding to Trial No. 289 of 2012 is set aside so far as the petitioner is concerned.

17. The application stands allowed to the extent indicated hereinabove.

(Ashwani Kumar Singh, J)

Md.S./ Pradeep/

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