IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50335 of 2012

==========

1. Suraj Kumar Singh @ Suraj Kumar S/O Sri Ramjee Singh Resident Of Village- Garbhuchak, Khajepura, Police Station- Hawai Adda, District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar & Ors.

.... Opposite Party/s

==========

Appearance :
For the Petitioner/s : Mr. Rajendra Prasad
For the State : Mr. Akbar Ali (App)
For. Opposite Party : Mr. Yogendra Pd. Sinha

==========

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

WEB COPY NOT OFFICIAL

5 31-07-2015 Heard learned counsel for the petitioner, learned counsel for the O.P. No. 2 as well as learned A.P.P.

Supplementary affidavit has been filed on behalf of the petitioner, taken on record.

O.P. No. 2, who happens to be one of the Managing Partner of Mateshwari Developers, a builder, at the instance of one Mahesh, broker entered into negotiation with the land holders relating to plot No. 747 and after finalization of the terms and conditions, agreement was executed, registered and in token thereof, it has also been disclosed that an amount appertaining to Rs. 1 Crore was received by Pramod Kumar through cash as well as cheque who after opening forged account with forged signature withdrew. In pursuance of aforesaid negotiation, when the complainant had gone over the land to construct apartment, the real owners namely, Rajit Kumar, Suraj Kumar (petitioner),

Suresh Prasad Singh and Krishna Kumar appeared and protested and further on query, they have disclosed that they never entered into the negotiation and also never received money, whereupon Pramod Kumar and Mahesh Prasad were intercepted who confessed their guilt, both of them had also issued cheque of different denomination which, ultimately bounced. On account thereof, prosecution has been lodged.

Learned counsel for the petitioner submits that actually his status would have been that of witness instead of arraying as an accused because of the fact that had complainant shown him as a witness then in that event, he would have exposed the conduct of Pramod Kumar as well as would have also disclosed that it was Pramod kumar who impersonated the real land holders, received cheques impersonating them and after opening fake accounts, withdrew the money. Apart from this, it has also been submitted that in Para-6 of the complaint there happens to be specific disclosure that while complainant had gone over the land, the real owner, who also consist the petitioner, appeared and protested over the activity of the complainant. Had there been complicity of petitioner, then in that event, the complainant would have identified the petitioner to be one of the culprit who had entered into an agreement with him, received the amount and digested the same, though petitioner has been made an accused.

The conduct of the complainant happens to be fair on account of having restrained himself from putting any kind of allegation against the petitioner. That being so, it has been submitted that it happens to be a fit case where in exercise of Section 482 of Code of Criminal Procedure is warranted to prevent abuse of the process of the Court as the learned lower court was wrong to summon the petitioner to face trial.

At the other end, the learned counsel representing O.P. No. 2 submitted that though there happens to be some sort of disclosure in the complaint petition identifying Pramod Kumar to be kingpin but, having active association with Pramod Kumar suggested petitioner's complicity also during commission of the crime. Further more, it has also been submitted that present stage happens to be cognizance stage and on account thereof Court should circumspect itself from the interfering with the order impugned.

Learned A.P.P. fairly submitted that in case there happens to be absence of prima facie case then in that event there could be exercise of power in terms of Section 482 of the Code of Criminal Procedure to prevent abuse of process of Court.

There happens to be no controversy with regard to exercise of power vested under Section 482 of the Code of Criminal Procedure relating to adjudication upon, more

particularly order of cognizance, which needs presence of prima facie case alone. Nothing more is warranted at the present moment. That happens to be reason behind that petitioner was directed to file S.A along with statement of the witnesses. After going through the same in consonance with the contents of the complaint petition, it is apparent that nothing more has been alleged against the petitioner save and except having his presence along with other real owners who have had protested presence of complainant over the land in question. That means there happens to be absence of prima facie case and which also suggests that learned lower court had proceeded in mechanical manner. On account thereof, order of cognizance dated 14.08.2012 passed by Sri. Amit Raj, Judicial Magistrate 1st Class, Patna in Complaint Case No. 754(c) of 2012 to the extent of petitioner is quashed. Petition is allowed.

However, it will be open to the O.P. No. 2 to pray before the learned lower court in terms of Section 319 of Code of Criminal Procedure in case material has been brought up on record suggesting their complicity.

(Aditya Kumar Trivedi, J)

sushma/-

U			