

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12216 of 2013

Arising Out of PS.Case No. -308 Year- 2011 Thana -MANER District- -

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1. Baiju Rai Son Of Late Bihari Rai, Resident Of Village - Sherpur, P.S. -
Maner, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Dinesh Kumar Rai, Son Of Late Deochand Raut, Resident Of Village -
Hasanpur, P.S. - Bhagwanganj, District - Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Arvind Kr.Pandey (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

4 23-07-2015 Heard the learned counsel, Mr. Rajeev Kumar Sinha
for the petitioner and the learned A.P.P. for the State.

This criminal miscellaneous application has been filed
for quashing the order dated 18.12.2012 passed by the learned
Judicial Magistrate 1st class, Danapur, Patna in Maner P.S. Case
No.308 of 2011 corresponding to G.R. No.3036 of 2011 whereby
the court below rejected the discharge application filed by the
petitioner.

It appears that the informant i.e. Bhagina of the
present petitioner lodged F.I.R. alleging that in the garb of
providing the job, the petitioner has taken Rs.80,000/- from the
informant but he neither returned the money nor has provided the



job. On the basis of the aforesaid F.I.R., the police after investigation submitted chargesheet. Cognizance was taken and thereafter the matter was sent for trial. Before framing charge, the application was filed by the petitioner for discharge under Section 239 Cr.P.C. By the impugned order, the court below has rejected the said application.

The learned counsel for the petitioner submitted that in fact, the informant was residing with the present petitioner and the petitioner was providing the cost of education and everything. Because there was some quarrel between them, this false case has been filed. The learned counsel further submitted that the so called agreement regarding payment of Rs.80,000/- was produced by the petitioner before the court below which is Annexure 2 which shows that the stamp paper was purchased on 11.06.2008 and the signature has been obtained on 16.01.2007. According to the learned counsel, this agreement is forged agreement. The learned counsel further submitted that while rejecting the application for discharge, the trial court has not considered the argument advanced by the petitioner, therefore also, the impugned order is liable to be quashed.

Perused the impugned order passed by the court below and the F.I.R.. It appears that there is direct allegation that the

petitioner who is maternal uncle of the informant has taken Rs.80,000/- from the informant. The court below in the impugned order found that there are sufficient materials for framing charge against the petitioner.

So far the so called agreement is concerned, the learned counsel admitted that this agreement was produced by him and the agreement produced by the informant has been kept by the police. The petitioner is not denying his signature on this agreement i.e. Annexure-2.

So far the submission of the learned counsel for the petitioner that because of quarrel, this false case has been lodged is concerned, it may be stated that the Hon'ble Supreme Court in the case of **Umesh Kumar v. State of Andhra Pradesh and another, (2013) 10 Supreme Court Cases 591** has held that "the issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In case there is some substance in the allegations and material exists to substantiate the complicity of the applicant (under Section 482 Cr.P.C.), the case is to be examined in its full conspectus and the proceedings should not be quashed."

Therefore, all the matters i.e. discrepancies in the date occurring in the so called agreement or that the allegation is

malicious or false because there was quarrel are all disputed questions of fact and it can only be tried by the court concerned and the same cannot be examined while dealing with the application under Section 482 Cr.P.C.

So far the submission of the learned counsel that the court below has not considered the submission of the learned counsel for the petitioner is concerned, it may be stated that at this stage, the Court is not required to pass an elaborate order examining all the evidences and materials meticulously. If there is sufficient material, the Court has the jurisdiction to frame the charge. It is settled principles of law that even if there is strong suspicion, then also the charge can be framed.

Therefore, I find no merit in this application and accordingly, this criminal miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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