

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11978 of 2013

Arising Out of PS.Case No. -485 Year- 2012 Thana -MUZFFARPUR COMPLAINT CASE District-

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1. Rajendra Mishra S/O Late Rameshwar Mishra Resident Of Village-
Aadigopalpur, P.S.- Bochahan, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar

2. Md. Jamal Ansari S/O Late Ismail Ansari Resident Of Village-
Budhnagar, P.S.- Bochahan, District- Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. S.M.Rahman(App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 21-05-2015 Heard the learned counsel for the petitioner and the

learned A.P.P. for the State.

This application under Section 482 Cr.P.C. has been

filed for quashing the order dated 17.05.2012/18.05.2012 passed

by the learned Judicial Magistrate 1st Class, Muzaffarpur in

complaint case No.485 of 2012 (Tr. No.4112 of 2012) whereby

the court below has taken cognizance under Section 406 I.P.C.

against the petitioner.

The learned counsel for the petitioner submitted that

the petitioner has no role to play in connection with the loan taken

by the complainant. No money was entrusted to the petitioner and



in fact, he is a farmer in the village. Falsely, it is alleged that he has encashed Rs.51,000/- and is not returned the said amount. According to the learned counsel, the said amount was given to the petitioner by witness No.1 for expenses in M.L.C. election. On these grounds, the learned counsel submitted that the court below has wrongly taken cognizance against the petitioner and there is no sufficient material against the petitioner.

On the other hand, the learned A.P.P. objected the prayer and submitted that when the court below has found sufficient material against the petitioner, the cognizance order needs no interference in inherent jurisdiction.

Perused the order passed by the court below. The complaint application has been annexed as Annexure 1 to the criminal miscellaneous application. From perusal of the complaint application, it appears that the complainant alleged that a panchayati was held wherein the accused No.1 was asked to return the balance amount for which he is unable to supply the honeybee's box. Accordingly, cheque was given by the accused No.1 and the accused No.2, who was a punch in the panchayati, encashed the said amount and that he did not pay the said amount to the complainant.

It appears that in support of this evidence, the

complainant has examined witnesses under Section 202 Cr.P.C. who have supported this fact and on the basis of this evidence, the court below has taken cognizance by the impugned order dated 17.05.2012/18.05.2012.

It is settled principles of law as has been held by the Supreme Court in the case of **Rishipal Singh v. State of Uttar Pradesh and another, (2014) 7 Supreme Court Cases 215** that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case or not. In the present case, it cannot be said that no offence has been disclosed in the complaint case because of the fact that there is direct allegation that this petitioner being one of the punches encashed the amount of the cheque given by the accused No.1 to the complainant and then he misappropriated the amount. In view of the above settled proposition of law, I do not find any reason to interfere with the order taking cognizance.

Accordingly, this criminal miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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