

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2682 of 2015

Arising Out of PS.Case No. -1265 Year- 2012 Thana -BUXAR COMPLAINT CASE District-
BUXAR

Kanhaiya Singh S/O Late Tulsi Singh Resident of village-Rampur,P.S-
Dhansoin,Distt.-Buxar

.... Petitioner

Versus

1. The State of Bihar
2. Sweta Kumari D/O Raja Ram R/O Sector-8-D,Bhojpur Colony,Bokaro
Steel City,P.S-Harla(Sector 9-B),Distt.-Bokaro,(Jharkhand)

.... Opposite Parties.

Appearance :

For the Petitioner : Mr. Bachan Jee Ojha, Advocate.
For the State : Mr. Dilip Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

2 29-04-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

2. This is an application for quashing the order dated
08.09.2014 passed by the learned Sessions Judge, in Cr. Revision
No. 91 of 2014 by which he has dismissed the revision petition
confirmed the order of the learned Judicial Magistrate by which
the Complaint Case No. 1265(C) of 2012 has been dismissed
under Section 203 of Cr.P.C.

3. The prosecution case as alleged that both the parties
entered into a contract. As per the contract it was agreed upon that
opposite party no. 2 shall sing for three years in the Orchestra
show for the complainant which has organised by the complainant

for a consideration of Rs. 2,00,000/-.The said agreement was entered into non-judicial stamp paper. Further , it is alleged that after taking money the accused-opposite party no. 2 did not abide by the contract and did not participate in the show arranged by the complainant, causing big loss both social and financially to the complainant due to her non-appearance in the show and the public ransacked the show and damaged the property.

4. Learned Judicial Magistrate by the impugned order found that there is a breach of agreement between the parties. On perusal of the case record observed that the present case is merely breach of contract and complainant has brought this case for recovery of his money and damages i.e. loss occurred to him due to non-performance of the opposite party no. 2. Hence, held that matter regarding breach of contract and it is a clear case of civil nature so dismissed the complaint.

5. Further the said order was challenged in the revisional court and revisional court also dismissed the petition challenge the order of the dismissal of complaint passed by the Judicial Magistrate.

6. Learned counsel for the petitioner submits that accused has cheated the complainant and this is a criminal breach of trust.

7. Having regard to the fact it is apparent that both the parties entered into a contract and on the basis of contract the accused will ready to sing in the function which has organised by the complainant, but the accused did not sing in the function which has organised by the complainant for which the complainant has huge loss of both socially and financially.

8. Having regard to the fact the matter concerned with breach of contract and if any loss occurred, the said loss can be compensate by claiming the damage due to non-appearance of the accused.

9. So far the criminal breach of trust is concern, since the money paid in lieu for singing in Orchestra so was a consideration for the same and was not an entrustment to keep money in trust of the complainant and so it cannot be said that the amount given was an entrustment to have been misappropriated for constitute an offence. So no offence under Section 406 of Penal Code is made out nor any offence under Section 420 of Penal Code is made out as there is neither a case that at the very outset the money was taken by misrepresenting and no intention to abide by the process or any misrepresentation and may breach of agreement make out a civil case. So offence under Section 420 of Penal Code is not made out.

10. Having regard to the fact, I do not find any merit to interfere with the order of the Judicial Magistrate as well as learned Sessions Judge.

11. As a result, the petition is dismissed.

m.p.

(Gopal Prasad, J)

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