

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3349 of 2014

Arising Out of PS.Case No. -1339 Year- 2010 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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Jayanti Kumari @ Varsha Rani, Wife of Vijay Kumar, Proprietor OM Trading
Company Vishal Phal Mandi, Raxaul at Present C/O Shambhu Prasad Ki Patti,
Ward No. 11, Bargania, P.S. Bargania, District - Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar
2. Arvind Kumar, Son of Hira Sao, Proprietor M/S Manju Traders, Agriculture
Market Yard, Shop No. 14, Ramchanderpur Town and Post Office - Bihar - Sharif
P.S.- Laheri, District - Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Arshad Jameel Hashmi, Advocate. Mr. Kamal Kishore Singh, Advocate.
For the Opposite Party No.2	:	Mr. Sanjeev Kumar, Advocate.
For the State	:	Mr. Dashreth Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 06-12-2016

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

2. This application, under Section 482 of the Code of
Criminal Procedure, is directed against the order dated 26.09.2011
passed in Complaint Case No. 1339 (C) of 2010, whereby the
Judicial Magistrate Ist Class, Biharsharif at Nalanda, summoned the
accused-petitioner on enquiry under Section 204 of the Cr.P.C.
finding prima facie case under section 420 of the Indian Penal Code



and Section 138 of the Negotiable Instrument Act.

3. The facts leading to this application is that opposite party no. 2, Arbind Kumar proprietor of M/S Manju Traders filed the Complaint Case No. 1339© of 2010 with contention that he is doing the wholesale business of grains in the name of M/S Manju Trades in Shop No. 14, Agricultural Yard, Ramchanderpur Bazar Samiti, Biharsharif, District – Nalanda and the accused-petitioner, Jayanti Kumar @ Varsa Rani, proprietor of M/S Om Trading Company used to do the business through her husband, Vijay Kumar, for purchasing of grains. The accused-petitioner agreed to purchase the rice. Accordingly, rice worth Rs.2,49,975 was send vide bill no. 1, dated 16.03.2010 through truck bearing Registration No. CG-04-7V-4942 for Raxaul, East Champaran. According to agreement for payment of rice, accused-petitioner issue cheque bearing no. 125337 dated 22.05.2010 of Rs. 1,00,000/- in the name of complainant-opposite party no. 2. Complainant- opposite party no. 2 submitted the said cheque before the State Bank of India, Main Branch, Biharsharif for encashment but the same was dishonored due to insufficient of money. The complainant-opposite party no. 2 made request on mobile for payment of price of rice then accused-petitioner assured to pay the amount of cheque and



remaining amount within two months. Thereafter, accused-petitioner issued two cheques, one cheque no. 125339 of Rs.50,000/- and other cheque no. 125340 of Rs.1,00,000/- in favour of the complainant-opposite party no.2 then all three cheques were submitted before the State Bank of India, Main Branch, Biharsharif for encashment but on 13.07.2010 aforesaid cheques were returned unclear due to stoppage of the payment by the accused-petitioner. The complainant-opposite party no. 2 again talked to the accused/petitioner, who asked to deposit the money in the month of August 2010. As per assurance of accused-petitioner, all cheques were submitted by the complainant-opposite party no.2 before the Bank for encashment but the cheques were dishonored on 10.08.2010 and 23.08.2010 due to stoppage of payment by the accused-petitioner. Thereafter, complainant-opposite party no.2 sent the legal notice on 09.09.2010 through the advocate for payment of Rs.2,50,000/- but the same was returned unserved with endorsement that the accused-petitioner has shifted to another place. Thereafter, another notice was issued to the accused-petitioner on 08.10.2010 but the same was also returned unserved.

4. After filing the complainant petition by the opposite party no.2, the learned Judicial Magistrate Ist Class, on



enquiry, summoned the accused-petitioner under Section 204 Cr.P.C., finding prima facie case, under section 420 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act through the impugned order dated 26.09.2011.

5. Learned counsel for the petitioner submits that admittedly the three cheques as detailed in the complaint petition were issued by the accused-petitioner as security for payment of price of rice as purchased by her firm and cash of Rs.2,50,000/- was handed over to the complainant-opposite party no. 2 in a room of Hotel situated at Biharsharif and request was made to return the three cheques but the complainant-opposite party no. 2 did not return the three cheques as the same were not with him. In spite of several request complainant-opposite party no. 2 did not return the three cheques issued by the accused-petitioner as security. Accordingly, the accused-petitioner filed informatory petition on 09.08.2010 in the court of Chief Judicial Magistrate, Sitamarhi detailing all the facts. But the complainant-opposite party no. 2 filed the present case on 28.10.2010 with ulterior motive for illegal gain. Learned counsel for the accused-petitioner further submits that it would appear from paragraph 7 of the complaint petition that out of three cheques, one cheque was issued on 15.07.2010, so



presentation of all the three cheques on 13.07.2010 for encashment as alleged is not possible and whole prosecution case becomes doubtful. As such impugned order, summoning the accused-petitioner on enquiry finding prima facie case under Section 209 I.P.C and 138 of the N.I. Act is illegal.

6. On the other hand, learned counsel for the opposite party no. 2 submits that it is not in dispute that three cheques of Rs.2,50,000/- were issued by the accused-petitioner which could not be credited in favour of complainant-opposite party no. 2, due to insufficiency of money/stoppage of the payment by the accused-petitioner. It is further submitted that the informatory petition which is said to be filed by accused-petitioner on 09.08.2010 about payment of entire price of rice and non returning of three cheques handed over to complainant-opposite party no. 2 as security is only to grab Rs. 2,50,000/- of complainant-O.P No. 2 which is due as price of rice sold to accused-petitioner .

7. The impugned order shows that on perusal of the complaint petition, S.A. of complainant and the statement of the witnesses, the learned Judicial Magistrate has summoned to the accused-petitioner finding prima facie case, under section 420 of



the Indian Penal Code and Section 138 of the Negotiable Instrument Act. I find no illegality in the impugned order amounting to an abuse of the process of the court for interference in inherent jurisdiction under Section 482 Cr.P.C.

8. Accordingly, this application is dismissed. However, the petitioner would be at liberty to raise all her points in the trial court at the appropriate stage.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.12.2016
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