

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 24098 of 2010

Arising out of P.S. Case No. -2745 Year- 2009 Thana –
Complaint Case District- GOPALGANJ

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Surendra Prasad Lal, Son of late Shiv Prasad Lal, permanent resident of Village-Barauli, Police Station-Barauli, District-Gopalganj, at present resident of Sant Kabir Road Banu Chhapar, near M.A. Convent Navin Colony, Bettiah, Police Station-Bettiah Town, District-West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Prabhuje Prasad, Son of late Narsingh Sah, Resident of Village & Police Station-Baraul, District-Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sachida Nand Rai, Adv.

For the Opposite Party/s: Mr. APP.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 22-01-2016

The Petitioner seeks quashing of the order of cognizance dated 19.05.2010 passed by the Judicial Magistrate, 1st Class, Gopalganj in C. Case No. 2745 of 2009 (Tr. No. 1173 of 2010).

The case of the Complainant is that he had taken a shop on rent from the Petitioner and had given Rs. 40,000/- as security advance. However, when he vacated the shop the amount of Rs. 40,000/- was repaid by the Petitioner by way of cheque. However, the cheque in question on presentation was dishonoured. When he requested the Petitioner to issue another cheque he became angry.

It has been submitted on behalf of the Petitioner

that the Court has not taken cognizance under Section 138 NI Act and the only allegation which remains is oral in nature in regard to transaction of Rs. 40,000/-. In the circumstances of the case, the allegations appear frivolous and unreliable.

Having considered that it would be impossible to prove the allegations during trial which would hence be a nullity, the entire proceeding including the order of cognizance dated 19.05.2010 passed by the Judicial Magistrate, 1st Class, Gopalganj in C. Case No. 2745 of 2009 (Tr. No. 1173 of 2010) is, hereby, set aside without prejudice to the right of the parties.

The Application stands allowed.

(Anjana Prakash, J.)

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