

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39607 of 2010

Arising Out of Complaint Case No.1138C of 2000 District- KISANGANJ

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1. Shekh Md. Ilyas @ Md. Ilyas, son of late Abdul Hakim
 2. Md. Aslam, son of Md. Ilyas
- Both resident of Chakala Police Station, Kishanganj, Distt. Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar
2. Hazi Md. Nashim Akhatar, son of Md. Khalil, resident of Line, P.S. and Distt. Kishanganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Singh, Adv.

For the State : Mr. K. Kishoe, A.P.P.

For the Opposite Party No. 2 : Mr. Najmul Hoda, Adv.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 28-03-2016

Heard learned counsel for the Petitioners and the State.

It has been submitted that the Petitioner No. 1 is no more and, therefore, his application is dismissed as having become infructuous.

The application against the Petitioner No. 1 is dismissed as having become infructuous.

The Petitioner No. 2 seeks quashing of the order of cognizance dated 25.9.2001 passed by the Judicial Magistrate, Kishanganj, in Complaint Case No. C1138 of 2000.

The case of the Complainant is that the Petitioner No. 1 had taken a loan from him and in lieu thereof, he had executed an

agreement for sale a certain piece of land. However, later on, the Complainant learnt that the land was litigated, so he asked for refund of his money for which reason the Petitioner No. 1 directed the Petitioner No. 2 to give a Cheque of Rs.70,000/- which was dishonoured on presentation.

It has been submitted on behalf of the Opposite Party No. 2 that no cognizance has been taken against the Petitioner under Section 138 of N.I. Act and, therefore, statement that the Petitioner issued the Cheque which was subsequently dishonoured, appears to be nothing but figment of imagination.

On the other hand, the counsel for the Complainant submits that since the Cheque had bounced, the Petitioner No. 2 should be put on Trial.

Having considered no cognizance was taken for the offence punishable under Section 138 of N.I. Act, the application is allowed and the order of cognizance dated 25.9.2001 passed by the Judicial Magistrate, Kishanganj, in Complaint Case No. C1138 of 2000, is hereby, set aside.

(Anjana Prakash, J)

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