

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19754 of 2013

Arising Out of PS.Case No. -1856 Year- 2011 Thana -GAYA COMPLAINT CASE District- GAYA

1. Ravibhushan Pandey son of Bhagwati Sharan Pandey
3. Bhagwati Sharan Pandey son of Late Nanda Pandey
Both Resident Of Mohalla Diha Bazar, P.S. Belaganj, District Gaya.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mukesh Kumar , son of Suryadeo Singh, r/o Mohalla New Colony Chhotki
Delha Road No. 1, Gali No. 6, P.S. Delha District Gaya

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shabir Ahmad
Sri Anil Kumar Saxena
For the Opposite Party/s : Mr. Sanjay Kumar Singh , A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 26-09-2016

Heard Sri Shabir Ahmad, learned counsel, who was assisted by
Sri Anil Kumar Saxena, learned counsel for the petitioners, Sri
Sanjay Kumar Singh, learned Additional Public Prosecutor and
learned counsel who has appeared on behalf of the complainant
/opposite party no. 2

Two petitioners, have approached this court invoking its
inherent jurisdiction under Section 482 of Code of Criminal
Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) with a
prayer to quash an order dated 7.8.2012 passed in Complaint Case



No. 1856 of 2011/ Tr. No. 1970 of 2012. By the said order the learned Judicial Magistrate 1st Class, Gaya (hereinafter referred to as the “Magistrate”) after conducting enquiry has taken cognizance of offence under Section 406 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act (hereinafter referred to as “N.I. Act”) and directed for summoning the accused persons including petitioners.

Short fact of the case is that the complainant /opposite party no. 2 filed a complaint in the court of learned Chief Judicial Magistrate, Gaya which was registered as Complaint Case No. 1856 of 2011. In the complaint it was alleged that the complainant was persuaded to provide a loan of Rs. 300000/- , however the complainant arranged Rs. 2,16,600/- and gave to the accused persons. It may be indicated that in the complaint petition three persons were arrayed as accused namely Onkar Kumar Ranjan, Ravibhushan Pandey and Bhagwati Sharan Pandey and out of three accused two have preferred the present petition. One accused Onkar Kumar Ranjan is non else but son of petitioner no. 2 which is evident from the complaint petition itself. The said money was obtained on the pretext that petitioners will start business. The said amount was to be returned to the complainant within two years i.e. by 14th June 2011 without any interest. With a view to assure the complainant that money will be



refunded the accused no. 1/ namely Onkar Kumar Ranjan/ brother of petitioner no. 1 issued a post dated cheque for Rs. 2,16,600/- as security deposit. It was alleged that after taking such huge amount from the complainant the accused persons never started any business and even after expiry of the fixed period the said amount was not refunded to the complainant despite his vigorous request. On instruction issued by the drawer of the cheque the said cheque was presented by the complainant in his account lying in the Central Bank of India, however the said cheque was returned without being honored. The said information was received, as per complaint petition, on 12.9.2011 and within time the complainant got legal notice issued to the drawer of the cheque. The notice was returned unserved on 10.10.2011 and as such within time i.e. on 3rd November 2011 the complaint petition was filed. After filing complaint petition the complainant was examined on S.A. and witnesses were also examined during enquiry only thereafter the learned Magistrate has passed the cognizance order which has been assailed in the present petition.

Learned counsel for the petitioners while assailing the impugned order at the very outset has argued that in the complaint petition fact was disclosed that besides the aforesaid two petitioners one person namely Ram Nivash Sharma also stood as witness but



to the reasons best known to the complainant the said Ram Nivash Sharma was left and he was not arrayed as accused. It has also been argued that the petitioners are not residing with the main accused i.e. accused no. 1 namely Onkar Kumar Ranjan and as such the petitioners may not be made accused for offence either under Section 406 of the Indian Penal Code or Section 138 of the Negotiable Instrument Act. It has been reiterated that cheque was not issued by the petitioners but it was issued by Onkar Kumar Ranjan in his individual capacity and as such the petitioners may not be proceeded for offence under Section 138 of the Negotiable Instrument Act. On aforesaid grounds a prayer has been made to quash the impugned order.

Learned Additional Public Prosecutor as well as learned counsel for the complainant have vehemently opposed the prayer of the petitioners. It has been argued by learned counsel for the complainant that the main accused namely Onkar Kumar Ranjan is none else but own brother of petitioner no. 1 and son of petitioner no. 2. He submits that in complaint petition itself there is specific accusation that all the accused persons on false pretext had obtained huge amount from the complainant. However he accepts that so far offence under Section 138 of the N.I. Act is concerned it is true that cheque was issued by Onkar Kumar Ranjan. He submits that in



the statement recorded on oath (solemn affirmation) the complainant has corroborated the allegation made in the complaint petition and during enquiry three witnesses were examined, who categorically supported the complainant's case and only thereafter the learned Magistrate has passed a legal and valid order which may not be interfered with.

Besides hearing learned counsel for the parties I have also perused the materials available on record. On going through the materials on record I find no apparent error warranting interference with the order of cognizance. So far argument of learned counsel for the petitioners that petitioners cannot be held liable for offence under Section 138 of the Negotiable Instrument Act is concerned, the Court is of the opinion that it is a premature stage. At the moment only order of cognizance has been passed. Whether charges will be framed under Section 138 of the Negotiable Instrument Act against the petitioners or not, it can be examined at appropriate stage by the court below itself. I do not find any ground to interfere with the order impugned.

The petition stands dismissed.

I may indicate that whatever observation has been recorded by this Court, same has been recorded only for the purposes of testing the order of cognizance. This observation may not prejudice

either of the parties at subsequent stage.

In this case earlier by order dated 8.5.2014 passed by this Court further proceeding in Complaint Case No.1856 of 2011 pending in the Court of Sri Prashant Kumar Jha, Judicial Magistrate, 1st Class, Gaya was directed to remain stayed and on 8.3.2016 while admitting the case for hearing interim order of stay dated 8.5.2014 was made absolute. This Court at the time of admitting the case for hearing also summoned lower court record of Complaint Case No. 1856 of 2011 / TR No. 1970 of 2012 from the Court of learned Judicial Magistrate, 1st Class, Gaya , which was earlier received and kept on record.

Accordingly in view of dismissal of this petition it is made clear that earlier order of stay granted by the Court stands automatically vacated. The Registry is directed to remit back the lower Court record of Complaint Case No. 1856 of 2011 / TR No. 1970 of 2012 to the Court of learned Judicial Magistrate , 1st Class, Gaya forthwith.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30-09-2016
Transmission Date	30-09-2016