IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.57928 of 2015

Arising Out of PS.Case No. -3410 Year- 2015 Thana -SAHARSA COMPLAINT CASE District-SAHARSA

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1. Ashish Kumar Singh @ Dilji Singh S/o Sri Ramesh Kumar Singh@Bauwa Singh@Ramesh Prasad Singh R/o Village Parariya, P.s Sonbarsa Raj, O.P Kash Nagar, Distt Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Kumar Singh S/o late Kritayanand Singh R/o Village Parariya, P.s Sonbarsa Raj, O.P Kash Nagar, Distt Saharsa.
3. Punjab National Bank, Shapur Branch, Saharsa Manager

.... Opposite Party/s

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with

Criminal Miscellaneous No.3645 of 2016

Arising Out of PS.Case No. -3410 Year- 2015 Thana -SAHARSA COMPLAINT CASE District-SAHARSA

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1. Ramesh Kumar Singh @ Bauwa Singh @ Ramesh Prasad Singh S/o Sri Parmanand Prasad Singh R/o Vill. Parariya, P.S. Sonbarsha Raj, O.P. Kash Nagar, Distt. Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sanjay Kumar Singh S/o Late Krityanand Singh R/o Vill. Parariya, P.S. Sonbarsha Raj, O.P. Kash Nagar, Distt. Saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioners	:	Mr. S.S. Dwividi, Sr. Advocate Mr. Ranjan Kumar Dubey Mr. Neeraj Kumar
For the Informant	:	Mr. Rajendra Narain, Sr. Advocate
For the State	:	Mr. Dr. Ravindra Kumar (App)
For the Bank	:	Mr. Kumar Priya Ranjan

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

16 15-12-2016 Heard learned Senior Counsel for the petitioners, learned Senior Counsel appearing on behalf of the opposite party No. 2 and learned counsel for the Punjab National Bank as well as learned Additional Public Prosecutor for the State.

The petitioners being father and son, in both the applications are apprehending their arrest in connection with

Complaint Case No. 3410C/2015 registered for the offences punishable under Sections 420 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act, 1881.

The allegation against the petitioners is that the opposite party No. 2 after having been given a substantial amount of money to the tune of rupees seven lakh eighty-seven thousand for participating in the business of the petitioner, failed to return the same. On demands having been made by the opposite party No. 2, the petitioner issued a cheque for which he had already issued instructions to the Bank not to make payment of the same.

Learned Senior Counsel for the petitioners further submits that in fact, the said cheque which is alleged to have been returned by the Bank for the reason “'stop payment” was, in fact, surreptitiously removed by the petitioner and by filling up the same in his own handwriting, the same was presented before the Bank, but since the petitioner had already written a letter to the Bank stating that the said cheque should not be honoured, the Bank returned the same and, therefore, there was no fraud or misrepresentation on his part nor had he given the said cheque to the informant to dupe him in any manner. He further insists that there was no monetary transaction between the petitioner and the opposite party No. 2 and, therefore, the entire case is full of contradiction and he may be extended the privilege of anticipatory bail.

In order to ascertain veracity of the allegations made against the petitioner, the Punjab National Bank has also been made a party in this case. The Punjab National Bank has also entered appearance and has filed detailed counter affidavits stating that the petitioner had issued a letter well in advance with regard to the stoppage of payment of the concerned cheque and, therefore, the Bank having received such a letter has stopped payment and not released the amount so stated in the cheques in favour of the opposite party No. 2. He has also filed a detailed bank statement of the petitioner and other relevant materials which goes to show that the Bank had acted in a bonafide manner in not making payment of the cheque alleged to have been stopped by the petitioner.

Learned Senior Counsel appearing on behalf of the opposite party No. 2 has strenuously urged that the petitioner had clear intention of misleading and duping the opposite party No. 2 inasmuch as from the year 2003 itself, the opposite party No. 2 had participated in the business of the petitioner and had advanced amounts to him which is evident from his bank statement. He further submits that he had borrowed money from his brother-in-law (*Sardhu*) who has also sworn in affidavit supporting the case of opposite party No. 2. He has further stated in Annexure-1 that he had given cheque No. 19903 to Ashish Kumar Singh for an amount of rupees twenty-five thousand. However, the subsequent amounts stated in the said Annexure is not stated as to have been given either in cash or by cheque. There are no other submissions by the opposite party No. 2 in his affidavit so as to indicate what other cheque numbers were issued in favour of the petitioner. The contention then advanced by learned Senior Counsel appearing on behalf of the opposite party No. 2 is that most of the amounts were handed over to the petitioner in the shape of cash which he had taken from his brother-in-law (*Sardhu*) on interest and the same stands supported by an affidavit by the concerned brother-in-law (*Sardhu*). However, there is no cogent material on record to either prove the partnership between the parties or to prove the said fact or indicate positively that said amounts had been, in fact, handed over to the petitioner.

Having heard learned counsel for the parties at length and after consideration of all the various affidavits filed by the respective parties, there appears to be a serious cloud on the prosecution story. If at all, there was any transaction, the same remains to be proved and the cash so advanced has to be conclusively proved at the trial alone. So far as the issuance of the cheque by the petitioners is concerned, the petitioner has squarely denied the issuance of the same and the Bank has also asserted that the cheque in question had not been paid to the opposite party No. 2. In view of the fact that the petitioner had already issued a letter to the Bank not to make payment of the cheque numbers referred to, in his letter dated 26.03.2015 by which the petitioner had stopped payment of the cheques which are alleged to have been issued there appears to be doubt regarding the fraudulent act of the petitioner.

In view of the aforementioned facts and circumstances of the case, let the petitioners (Ashish Kumar Singh and Ramesh Kumar Singh) in both the applications, in the event of their arrest / surrender within a period of four weeks from the date of receipt/production of a copy of this order, be enlarged on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class, Saharsa in connection with Complaint Case No. 3410C/2015, subject to the conditions as laid down under Section 438(2) of the Cr. P.C.

(Anjana Mishra, J)

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