IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49381 of 2012

Arising Out of PS.Case No. -null Year- null Thana -null District- -

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1. Md. Abdus Sattar, S/O Late Md. Hanifuddin, resident of village- Madheli, Police Station- Alamnagar, District- Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar
2. Housing and Urban Development Corporation Limited (HUDCO), 2nd Floor, Block-B/2, Maurya Lok Complex, Dak Banglow Road, Patna, through its duly authorized Officer Mr. Manoj Kumar Pandey.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Syed Alamdar Hussain, Advocate Mr. S. A. Najmi, Advocate
For the Opposite Party/s	:	Mr. Satyendra Prasad, APP
For HUDCO	:	Mr. Prashant Kumar, Advocate Mr. Amaresh Kumar Sinha, Advocate Mr. Nagdeo Choubey, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 23-02-2016

In the nature of financial dispute between the parties, this Court had repeatedly adjourned the matter so that the dispute could be resolved but the same could not be done.

The Petitioner seeks quashing of the order of cognizance dated 20.11.2009 passed by the Judicial Magistrate, 1st class-cum- Additional Judge IV, Patna, in Complaint Case No.2453-C of 2009.

The case of the Complainant is that it is a public financial institution and had provided financial assistance to the

Petitioner's Company which defaulted in payment. Subsequently, the dues was sought to be cleared by issuing a cheque of ₹58.51 lacs but when presented the cheque was dishonoured and hence, the present Complaint Petition.

It has been submitted on behalf of the Petitioner that for the same subject matter a proceeding is pending before the Debt Recovery Appellate Tribunal, Allahabad, and hence, for issuing a cheque which had subsequently been dishonoured, a separate Complaint Petition should not be instituted since liability is the same. Further submission is that the loan was advanced to the Company and the Company is not being proceeded against and, hence, the Petitioner in his personal capacity should not be prosecuted as was held by the Apex Court in the case of **Anil Gupta Vs. Star India Pvt. Limited and another reported in (2014) 10 SCC 373**.

On the other hand, counsel for the HUDCO submits that since the cheque issued by the Petitioner was dishonoured, it being a criminal offence has rightly proceeded against the Petitioner under the provisions of Negotiable Instrument Act. Further submission is that, no doubt, Company was made an accused in the earlier instance but no cognizance was taken on the ground that Petitioner in his personal capacity had issued the cheque and he was a personal guarantor of the Company.

Undoubtedly once a cheque is dishonoured, it prima facie shows that the drawer of the cheque had a liability to discharge and it not having been obliged, he should be prosecuted under the relevant provisions.

As for Court not proceeding against the Company but in the independent capacity of the Petitioner, since the cheque was drawn by the Petitioner and not by the Company even if the loan was against the Company, I see no reason why the order of cognizance should be set aside for this reason.

The application is **dismissed**.

(Anjana Prakash, J)

NAFR
J.Alam/-

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