

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Miscellaneous No.22953 of 2014**

Arising Out of PS.Case No. -303 Year- 2010 Thana -HAJIPUR SADAR District-
VAISHALI(HAJIPUR)

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1. Ram Binod Singh Son of Late Ram Bahadur Singh
2. Malti Devi Wife of Ram Binod Singh Both Resident of village- Nirpur,
P.S.- Jurwanpur, District- Vaishali.
3. Akhilesh Singh Son of Late Jagarnath Prasad Singh resident of village-
Mokhtarpur, P.S.- Mahanar, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar
2. Chandra Bhushan Prasad Singh Son of Late Dharikshan Singh Resident
of mohalla- Chanakya Colony (Digghi Khurd), P.S.- Hajipur Sadar,
District- Vaishali.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Smt. Anuradha Singh, Advocate

For the Opposite Party/s : Mr. Anand Kishore Choudhary(APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 01-09-2016 Heard learned counsel for the petitioners as well as
learned APP for the State.

2. At an earlier occasion, petitioners being accused in
Hajipur Sadar PS Case No. 303/2010, Trial No. 3136/2013
pending before Sri Rajiv Ranjan, Judicial Magistrate-1st Class,
Vaishali at Hajipur challenged the order dated 21.01.2014
whereby and whereunder prayer having been made at their behalf
under Section 239 of the Cr.P.C. was rejected but, by way of
supplementary affidavit, petitioners have prayed for correction of
prayer having so made under paragraph-1 of the instant petition
along with prayer portion and intend to substitute the same by way
of challenging the order of the cognizance dated 17.08.2011
passed by learned Chief Judicial Magistrate, Vaishali at Hajipur.

On account of presence of certified copy of the order impugned since before on the record, prayer is allowed and accordingly, petitioners are directed to amend the original petition.

3. In spite of having been noticed, O.P. No.2/complainant/informant failed to appear.

4. O.P. No.2 filed Complaint Petition bearing no. 2162/2010 against the petitioners on 22.07.2010 putting an allegation that petitioners/accused Ram Binod Singh and Malti Devi approached him for purchase of Sonalika Tractor and further after paying Rs. 65,870/- as cash, sworn an affidavit that remaining amount appertaining to Rs. 3,71,000/- will be paid within a month whereupon interests at the rate of 1.5% will be chargeable. Malti Devi as well as Akhilesh Singh stood as witnesses thereupon. Thereafter, tractor was handed over to the accused. In the 3rd week of April, 2009 accused Ram Binod Singh and Malti Devi came to him and handed over cheque bearing no. 0077478. The aforesaid cheque was deposited for encashment but, the bank returned the same on 22.10.2009 stating 'exceed arrangement' whereupon Advocate Notice was served on 06.11.2009 which the accused persons receive on 16.11.2009, even then, neither payment was made nor the accused persons came to receive the original document. They have not also replied. Reminder was effected on 13.02.2010 but again accused failed to respond and so, it has been alleged on behalf of complainant that

under deceitful means remaining amount appertaining to Rs. 3,71,000/- along with interests was misappropriated.

5. The aforesaid complaint was sent to the concerned police station for registration and investigation of the case according to Section 156(3) of the Cr.P.C whereupon Hajipur Sadar PS Case No. 303/2010 was registered followed with investigation and after concluding the same, charge-sheet was submitted for an offence punishable under Sections 420, 406 and 34 of the IPC as well as 138 of the N.I. Act whereunder cognizance had also been taken vide order dated 17.08.2011 by the learned Chief Judicial Magistrate as indicated above, hence this petition.

6. With regard to taking of cognizance under Section 138 of the N.I. Act in terms of Section 142(a) of N.I. Act, it is evident that only complaint is entertainable whereupon cognizance could be taken. Apart from this, the prosecution has been launched much beyond the time so prescribed on account thereof, cognizance to the extent of Section 128 of the N.I. Act is found bad.

7. So far Sections 406, 420 of the IPC is concerned, it is to be seen whether at the time of negotiation amongst the parties, the accused had approached with a criminal design in order to cheat the complainant. From the document available on record, it is evident that apart from both the parties indulging in



putting allegation against each other by way of serving Advocate Notice, a complaint bearing Case No. 88/2010 (Annexure-5) was launched at the end of petitioner/accused, Ram Binod Singh against the complainant and others before consumer forum for supply of old and defective tractor and the same was allowed directing the Opposite Parties to pay Rs. 3 Lacs as compensation. Furthermore, on account absence of O.P. No.2, it is not known whether the aforesaid judgment dated 19.08.2011 passed in Case No. 88/2010 was ever challenged at his end as well as having been set aside or not. Moreover, there happens to be complete absence at the end of prosecution whereupon, it could be decipher whether at the time of negotiation, accused were carrying criminal intention to cheat the informant/complainant.

8. In the aforesaid background, neither it could be said that there was an intention at the end of petitioners to deceive nor on account of supply of defect tractor, the remaining amount appertaining to Rs. 3,71,000/- was criminally misappropriated. Moreso, under Consumer Court, O.P. No.2, complainant/informant is found under obligation to pay Rs. 3 Lacs as compensation on that very score. That being so, after analytical approach of the materials available on the record, it is evident that instant prosecution happens to be *mala fide*.

9. In the case of *State of Hariyana & Ors. Versus Bhajan Lal & Ors* as reported in *AIR 1992 SC 60*, the Hon'ble

Apex Court has identified following categories including others wherein prosecution can be quashed and those are :-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the



provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

10. Thus, the order of cognizance does not justify its prevalence whereupon the same is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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