IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49292 of 2013

Arising Out of PS.Case No. -3110 Year- 2010 Thana -Patna Complaint Case District- Patna

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1. Subhash Chand Aggarwal @ S.C. Sinha (Managing Director), M/S Smc Global Securities Ltd. At 17, Netaji Subhash Marg, Daryaganj, Delhi - 110002
2. Mahesh Chand Gupta (Vice Chairman), M/S Smc Global Securities Ltd. At 17, Netaji Subhash Marg, Daryaganj, Delhi - 110002

.... Petitioner/s

Versus

1. The State Of Bihar
2. Shankar Kumar Surekha S/O Duli Chandra Surekha, M/S Dropati Sales, Near Lic Building, Dak Bunglow Chowraha, Tariq Manzil, P.S. Kotwali, District - Patna Permanent Resident Of Main Road Alam Nagar, Near Central Bank, P.O. Alam Nagar, District - Madhepura, State - Bihar

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
ORAL JUDGMENT
Date: 22-01-2016

No one appears on behalf of the Opposite Party no. 2.

This case has been taken for out of turn hearing on the mentioning of a counsel from outside the State.

It has been submitted on behalf of the Petitioners that due information was given to the counsel of the Opposite Party No. 2 with regard to notification of this case as also the case was notified at 10.30 AM itself. I however find he has chosen not to appear before this Court and hence this Court is proceeding to hear the matter without his attendance.

The Petitioners, seek quashing of the order dated 03.02.2011 passed by the Judicial Magistrate 1st Class, Patna in

Complaint Case No. 3110C of 2010 as far as it relates to them.

The case of the complainant is that he had invested Rs. 3,70,000/- in M/s SMC Global Securities Ltd./SMC Comtrade Ltd on the assurance of the representative of the company that he would get good returns on the said investment. However, he was never given any paper. In the meanwhile, one of the accused namely, Rashmi Kumari Sinha issued a cheque through her husband Chandan Kumar Roshan dated 27.09.2010 to the tune of Rs. 1,17000/- in favour of the complainant but when he presented the same in the Bank, it was dishonored. It was alleged that in conspiracy with each other, the accused had cheated him of huge amount of money.

It has been submitted on behalf of the Petitioners that apart from having been named in the Complaint Petition as Directors or Office bearers of the company, there is no averment in regard to them having indulged in any transaction with the complainant. He has only vaguely and generally stated that the representative of the company had cheated him. There is no mention of which of the Representative of the company or which of the Petitioners had done so. When the complainant has not pointedly averred personal culpability of the petitioners, in such a situation cognizance as against them appears to be unjustified.

Having gone through the Complaint petition and the general nature of allegations which is wanting in material particulars justifying their prosecution, I would be inclined to set it aside. Hence the proceedings including the order dated 03.02.2011 passed by the Judicial Magistrate 1st Class, Patna in Complaint Case No. 3110C of 2010 so far as the Petitioners are concerned, is hereby quashed without prejudice to the rights of the parties.

The application stands allowed.

(Anjana Prakash, J)

Prakash/-

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