

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44027 of 2014

Arising Out of P.S.Case No. -1350 Year- 2013 Thana -GAYA COMPLAINT CASE District- GAYA

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1. Anil Kumar Agarwal Son of Ram Awatar Agarwal, as a proprietor of M/s Vinayak Salt Company, Resident of the village at Purulia Road, Bansidih (Chass) at District - Bokaro (Jharkhand)
 2. Rakesh Kumar Mishra @ Babloo Mishra as agent M/S Vinayak Salt Company, Son of Krishan Kishore Mishra Resident of Village - Bajaura, P.S. - Dobhi, at District - Gaya.

.... Petitioners

Versus

1. The State of Bihar
2. Rana Pratap Singh Son of Rambali Singh R/o of the Village -Masautha Kala, P.O. Bara Gandhar, P.S. - Gaya Muffasil, at District- Gaya (Bihar).

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Ajay Kumar Sinha, Advocate.
For the Opposite Party No.2 : Mr. S. Prasad, Advocate
For the State : Mr. Lallan Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 04-09-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 01.04.2014 passed by Judicial Magistrate, Ist Class, Gaya in Complaint Case No.1350 of 2013 whereunder the learned Magistrate took cognizance of offence under Section 420 of the IPC and ordered for issuance of summons against the petitioners.

2. Heard and perused the record.

3. The facts in brief is that the Opposite Party No.2 filed a complaint case no.1350 of 2013 against the petitioners on 18.07.2013



alleging inter-alia that the petitioner no.1 had taken three blank cheques as security. In course of business transaction, the petitioner had to supply poultry feed (Murgi dana) to the complainant. The petitioner supplied poor quality of poultry feed and so the complainant stopped taking delivery of Murgi dana and requested to return the said blank cheques. The petitioners fraudulently with ulterior motive filled the cheques and deposited in bank for clearance and thereby committed fraud and forgery. After enquiry, the learned Magistrate considering the statement of complainant and other witnesses took cognizance of offence against the petitioners and ordered for issuance of summons.

4. The learned counsel for the petitioners submits that from the allegation no offence under Section 420 of the IPC is made out. The petitioner had supplied poultry feed (Murgi dana) to the complainant against which the Opposite Party No.2 issued cheques for a total consideration of Rs.3,84,525/-. The petitioners deposited the said cheques in bank which bounced on 12.03.2013. In this regard, the petitioners gave legal notice on 04.04.2013 and thereafter filed a complaint case no.525 of 2013 before the Judicial Magistrate, Bokaro. The learned Magistrate has taken cognizance in the said case on 13.05.2013. The complainant having come to know about the filing of the said case has filed the present complaint case only to harass the



petitioners and to save his skin from the liability of making payment. The learned Magistrate has passed the impugned order without applying judicial mind and so the impugned order is fit to be quashed.

5. The learned APP as well as Opposite Party No.2 opposed the submissions.

6. On perusal of complaint petition and annexures on record, I find that prior to filing of the complaint case by Opposite Party No.2, the petitioners had filed complaint case No.525 of 2013. The matter was enquired and the learned Magistrate has taken cognizance in that case. The present case has been filed subsequent to the case of the petitioners.

7. In the case of Eicher Tractor Ltd. & Others Vs. Harihar Singh (reported in (2008) 16 S.C.C. 763, I find that in the said case the appellant after issuing a legal notice, filed complaint case against the respondent. The lower court finding prima facie case for the offence U/s 138/142, 141 of N.I. Act, ordered for issuance of summons against the respondent. Subsequent to the said case, respondent filed complaint case no. 1343 of 2004 alleging therein that the appellant had stolen the cheques and after making forgery and interpolation, presented the same in Bank and thus committed an offence punishable under Sections 468 and 471 of the Indian Penal Code. The Magistrate took cognizance on 08.02.2005. The cognizance order was challenged before Hon'ble Allahabad High Court under Section 482 of Cr.P.C. which after hearing was dismissed. The matter went to Apex Court where it was allowed and proceeding against the appellant was quashed holding that the said case squarely covered within the parameters indicated in category (7) of Bhajan Lal case (1999 Supp (1) S.C.C. 335).



8. The present complaint case of Opposite Party No. 2 was filed subsequent to the complaint case of the petitioners. The fact of this case is similar to the case decided by Hon’ble Apex Court. The factual scenario indicates that the present complaint case has been filed maliciously with an ulterior motive with a view to counter the proceeding initiated by the petitioners.

9. In view of the discussion made above, I find that the criminal prosecution of the petitioners would be an abuse of process of the Court. Accordingly, the order dated 01.04.2014 passed by learned Judicial Magistrate, 1st Class, Gaya, is quashed and this Criminal Miscellaneous Application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
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