

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.2236 of 2015

Arising Out of PS.Case No. -1290 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Pooja Singh @ Pooja Shrinet Wife of shri Ashish Shrinet
 2. Ashish Shrinet Son of Late K.P . Singh
 3. Vikash Singh Son of Sri Upendra Nath Singh All are Resident of B-1082, Indra Nagar, Near Shekhar Hospital, Bootnath Road, P.S-Gajipur, District & Town - Lacknow,-16, U.P

.... Petitioner/s

Versus

1. The State of Bihar
2. Dharambir Prasad Singh Son of Late Naresh Chandra Singh Resident of Mohalla- Golapar, Near Dhaneshwari School Gate, Police Station - Danapur, District - Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chiranjiva Ranjan
For the Opposite Party/s : Mr. Pawan Kr.Chaurasia(APP)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

4 03-03-2017 Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor.

2. Nobody appears on behalf of the opposite party no.2, although the name of the learned counsel appearing on behalf of the opposite party no.2 appears in the daily cause list.

3. The petitioners, by filing this petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as “the Code”), pray for quashing the order dated 25.3.2014 passed in Complaint Case No. 1290(C) of 2013 whereby the learned Judicial Magistrate, 1st Class, Danapur, Patna,



has found that a prima facie case under Section 138 of N.I. Act and Section 406 of the Indian Penal Code is made out against the accused persons.

4. The Complainant-Opposite party no.2 made the petitioners accused and alleged that he entered into an agreement with all the three accused persons- petitioners for taking Franchise of Dutchman Brand readymade garments. The petitioners are selling the clothes of aforesaid brand and they wanted to take the shop of the complainant on payment of rent of Rs. 85,000/- per month. Rs. 1,50,000/- was paid as an advance and Rs. 8,00,000/- was to be paid later-on. The complainant further alleged that after inauguration, the shop was opened and the accused persons gave three cheques, each of Rs. 85,000/-, as rent of the shop for three months after executing the agreement. The petitioners gave three cheques on 10.6.2013, 10.7.2013 and 10.8.2013 against margin money. When the complainant presented the cheques, the same were not honoured.

5. The complainant was also examined on S.A. and the learned Magistrate vide order dated 25.3.2015 found that a prima facie case under Section 138 of N.I. Act and Section 406 of the I.P.C. is made out against the petitioners.

6. The learned counsel for the petitioners has assailed the impugned order on the ground that no ingredient is present for



constituting offence under Section 138 of N.I. Act. The complainant has not stated anywhere in the complaint petition as to who was the signatory of the cheques. The cheques were issued in lieu of having opened the shop, but not in lieu of discharge of debt. Even no case under Section 406 of the I.P.C. is made out as there is no breach of criminal trust. The learned Judicial Magistrate, however, found a prima facie case against the petitioners, but did not advert any evidence and the order is passed in a mechanical and slipshod manner.

7. From perusal of the order impugned itself, it appears that the learned Judicial Magistrate has not dealt with the evidence of any of the witnesses; of the complainant and his witnesses and found that a prima facie case is made out. The order does not contain any reason for coming to the finding of the prima facie case. Therefore, the impugned order dated 25.3.2014 is not sustainable and the same is quashed. The matter is remitted back to the learned Judicial Magistrate, 1st Class, Danapur to pass order afresh in accordance with law.

(Prabhat Kumar Jha, J)

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