

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1912 of 2015

Arising Out of PS.Case No. -382 Year- 2013 Thana -COMPLAINT CASE District- ARRARIA

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1. Ashok Kumar Son of Gayanchandra Resident of Mohalla - Bhatta Bazar, Purnea
Near Delux Hotal, P.S. Khajanchi Hat, Purnea, District - Purnea

.... Petitioner/s

Versus

1. The State of Bihar
2. Kirtaya Nand Mishra Son of Late Satyadeo Mishra resident of Kharhiya Basti
Ward No. 10, Araria, P.S. & District - Araria

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava, Advocate

For the Opposite Party/s : Mr. Kr. Uday Pratap, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 27-02-2017

Heard both sides.

2. The petitioner seeks quashing of the order dated 13.08.2014 passed by the learned Sessions Judge, Purnea in Cr. Rev. No. 152 of 2014 whereby the revision petition of the petitioner has been dismissed. The petitioner also seeks quashing of the order dated 26.06.2013 passed by the learned Judicial Magistrate, 1st class, Araria in complaint case No. 382 of 2013 by which the learned Judicial Magistrate found prima facie case under Section 403, 418 of the IPC and under Section 138 of the N. I. Act against the petitioner.

3. The complainant alleged that petitioner took Rs. one lac from him for purchasing a piece of land on assurance to give one



katha land to the complainant. The complainant gave Rs. one lac to the petitioner but the petitioner did not return the money and gave a cheque of UCO bank, Purnea bearing No. 512925 of Rs. one lac but when the cheque was presented, the bank returned the cheque with endorsement that there was no sufficient fund in the account of the petitioner.

4. The complainant was examined. The complainant also examined his witnesses. The learned Judicial Magistrate found prima facie case under Section 403, 418 of the IPC and under Section 138 of the N. I. Act. The petitioner preferred revision against the order finding prima facie case against him but the learned Sessions Judge dismissed the revision petition on 13.08.2014.

5. The learned counsel for the petitioner assailed both the orders on the ground that the notice was not properly served upon the petitioner and the endorsement of the bank was not sent along with legal notice as the complainant has annexed the same along with the complaint petition. It is further submitted that no offence under Section 403, 418 of the IPC is made out.

6. From the records it appears that the complainant very categorically stated in the complaint petition that the petitioner took money on the pretext of purchasing land on assurance that he would give one katha of land to the complainant. Thereafter, the complainant



gave Rs. one lac to the petitioner but he did not return the same and issued a cheque but when the cheque was presented, the same could not be honoured. The witnesses have also stated that petitioner, on assurance to give one katha land to the complainant, borrowed Rs. one lac from the complainant but he cheated the complainant. The complainant specifically stated in the complaint petition that he sent legal notice along with endorsement of the bank to the petitioner and merely because the endorsement is attached with the complaint, it cannot be said that endorsement of the bank was not sent along with legal notice.

7. Having considered the facts aforesaid, I do not find any illegality in the orders impugned. Accordingly, this quashing petition is dismissed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01.03.2017
Transmission Date	01.03.2017

