

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47625 of 2013

=====

1. Tarun Kumar @ Tarun Singh , Directors Of M/S Vishal Builtech (India) Pvt Ltd Son Of Kartik Singh R/O Lg-1 & 2 Majestic Plaza, West Boring Canal Road, Patna

2. Vishal Singh Directors Of M/S Vishal Builtech (India) Pvt Ltd Son Of Kartik Singh R/O Lg-1 & 2 Majestic Plaza, West Boring Canal Road, Patna

.... Petitioner/s

Versus

1. The State Of Bihar

2. Rajesh Kumar Santhalia Son Of Vijay Kumar Santhalia R/O Chaudhary Tola, Kahalgaon, P.S. Kahalgaon, Distt-Bhagalpur
Opposite Party/s

=====

Appearance :

For the Petitioner/s Mr. Raj Kishore Prasad, Advocate

For the Opposite Party/s Mr. A.L.Pandit(App)

For the complainant Mr. Ashish Giri, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

6 01-05-2017 The instant criminal miscellaneous has been filed for quashing the order dated 21.07.2011 passed by the learned Judicial Magistrate, 1st Class, Bhagalpur in Complaint Case No. 162 of 2010 whereby and whereunder, cognizance has been taken for the offence under Section 138 of the Negotiable Instrument Act against the petitioners.

Heard the learned counsel for the petitioners, learned counsel for O.P. No. 2 and learned A.P.P. for the State.

The O.P. No. 2 has filed a complaint case in the court of



Chief Judicial Magistrate, Bhagalpur alleging therein that the complainant is engaged in the business of supply of stone chips, cheli, boulder etc. The petitioners, who are the contractors, approached the complainant in February, 2009 and asked for supply of stone chips. Thereafter, the accused persons started purchasing materials from the complainant through their agent Pappu Bhagat. The petitioners used to make the payment immediately after supply of the stone materials to the complainant and in that way they have taken the complainant in their confidence. The petitioner had purchased stone chips worth Rs. 33 lakhs and the payments of the same were being denied. After great persuasion, the accused Tarun Singh had given a cheque of Rs. 20 lakhs and had also made payments of Rs. 15 lakhs through RTGS thereafter the complainant had also supplied stone chip of Rs. two lakhs. When the cheque was deposited in State Bank of India, Kahalgaon Branch, by the complainant on 12.11.2009 which was dishonored on account of insufficient fund thereafter, the complainant gave notice under Section 138 of the Negotiable Instrument Act to the petitioners which were replied by the petitioners by making counter allegations upon the complainant. Lastly on 01.02.2010, the petitioners have flatly refused to make the payment of cheque amount and then the case was filed. The



complainant was examined on solemn affirmation. Enquiry witnesses were also examined and the impugned order has been passed.

On behalf of the petitioners it is submitted that the entire allegations made in the complaint case is false and concocted. It is true that the petitioner's company had supplied the stone chips but not directly to the petitioners. All the supplies of the stone chips were made to the petitioners through agent. On the instruction of the said agent, the company of the petitioners had issued four cheques including the cheque of the complainant.

During the course of supply of stone chips, the agent of the petitioners requested the petitioners to transfer the cash in respective accounts of the parties because the suppliers are not in a position to supply the stone chips and then through RTGS Rs. 14 lacs was transferred in the account of the complainant. Thereafter the petitioner company vide letter no. 103 dated 18.08.2009 had requested the Banker of the petitioners to stop payment of the cheques till the period but the bank by mistake dishonored the cheque on account of insufficient fund instead of stop payment. After the cheque was dishonored the complainant gave a legal notice to the petitioner on 26.12.2009 asking the petitioners to make payment of the cheque amount within a period of fortnight



otherwise necessary legal action will be taken. The petitioner replied the said notice stating that entire amount has already been paid to the complainant through RTGS and the complainant fraudulently did not return the cheque and presented the same for encashment even after receiving the amount against the supply of stone chips. The O.P. No. 2 has dishonestly tried to withdraw the cheque amount without there being any supply made to the Company of the petitioners.. There must be Mining Challans, proof of payment of Sales Tax and the Bills prepared in the name of the Company of the petitioners but without any document, cognizance has been taken. No offence is made out against the petitioners even after assuming the entire allegation to be true. It is purely a civil dispute and, as such, the impugned order is fit to be quashed.

On the other hand, learned APP and learned counsel for O.P. No. 2 submits that at this stage factual defence cannot be looked and for deciding the same, the proper stage is at the time of hearing on point of charge. At this stage the only requirement is to see as to whether on the basis of materials collected during enquiry prima facie offence is made out or not and the learned Magistrate after finding case is made out against the petitioners in Section 138 of Negotiable Instrument Act has passed the order



which is quite legal, proper and quite justified. Reliance has been placed upon the ruling reported in **2015 (3) PLJR SC 25 HMT Watches Ltd. Vs. M.A. Abida & Anr.** It has been argued that given instruction of stop payment issued to the Banker would be sufficient to make the accused liable under Section 138 of N.I. Act, Factual defenses of the accused which are disputed once cannot be looked into at this stage. It is admitted position that cheque of Rs. 20,000,00/- was given to the complainant which was dishonored. It has also been argued that in such type of matter both civil proceedings and criminal proceedings will be maintainable.

Having considered the submissions urged at the Bar going through record, the order impugned the complaint petition the statement of the complaint on solemn affirmation and the statement of the enquiry witness is manifest that the learned Magistrate has rightly passed the order dated 21.07.2011 holding that offence under Section 138 of N.I. Act is made out against the petitioners. At this stage the defence of the accused person cannot be considered. Factual defenses which are disputed one cannot be looked into at this stage

In the result, finding no illegality, incorrectness or



impropriety in the impugned order, the same is hereby confirmed
and this criminal miscellaneous is merit less is hereby dismissed.

.

(Jitendra Mohan Sharma, J)

sushma/-

U		T	
---	--	---	--

