**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.22850 of 2012**

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Ramashish Sharma, S/O Kanhaiya Thakur Sharma, Resident Of Village- Dhurwa Math, P.S.- Bettiah Muffasil, District- West Champaran.

.... .... Petitioner/s

Versus

1. State of Bihar

2. Geeta Devi, W/O Yogendra Paswan, Resident of Chanpatia Dusadhpatti, Ward No.-9, P.S.- Chanpatia, District- West Champaran.

.... .... Opposite Party/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Umesh Chandra Verma, Advocate. |
| For the State | : | Mr. Jharkhandi Upadhyay, A.P.P. |
| For the O.P. No. 2 | : | Mr. P.K.Pandey, Advocate. |

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR**

ORAL JUDGMENT

**Date: 25-04-2017**

Heard learned counsel for the parties.

2. This petition has been filed for quashing order dated 01.02.2012 passed by Sri A.K.Pandey, learned Judicial Magistrate, Bettiah, West Champaran in Trial No. 2126 of 2012, arising out of Complaint Case No. 722 (C) of 2011, whereby finding a *prima facie* case under Sections 403, 417 and 504/34 of the Indian Penal Code against the petitioner, directed to issue summon in order to put him on trial.

3. A brief fact giving rise to the case is that Geeta Devi filed a complaint case, bearing Complaint Case No. 1101 of 2010, in

the court of learned Chief Judicial Magistrate, Bettiah, West Champaran, which was sent to the concerned police station, under Section 156(3) of the Cr.P.C., for registering F.I.R. and investigation and accordingly Chanpatia P.S.Case No. 178 of 2010 was registered against Ramashish Sharma and his wife Sarswati Devi under Sections 420, 406, 467 and 468 of the Indian Penal Code and under Section 3(1)(x)(ix) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. However, the police, during investigation, found the case not true and came to conclusion that the money was withdrawn by cheque by the informant from the bank and accordingly, submitted final form against the accused persons, but, thereafter, on protest petition filed by the informant treating the same as complaint registered Complaint Case No. 722 (C) of 2011. The learned Magistrate proceeded for enquiry and after examining three witnesses at the enquiry stage, has issued summoning order to put him on trial, which has been challenged before this Court.

4. The allegation, in brief, as levelled in the complaint petition, is that Most. Jagmati Kuer, the mother of the complainant, was insured with Bajaj Insurance Company, but after her death, accused Ramashish, an agent of the Insurance Company, persuaded the complainant to get the money of insurance claim withdrawn, obtained copy of PAN card and 06 blank cheques signed by the

complainant in order to get the claim money. Thereafter, the claim amount of Rs. 2,53,530/- was transferred in her account, A/c No. 11550002475 with the State Bank of India, Chanpatia Branch, Bettiah. She went to Ramashankar Sharma and persuaded him to return her cheque and passbook, but he evaded and also got signature of the complainant on a stamp paper on the pretext of expeditious withdrawal of the money from the Insurance Company. Later on, the complainant enquired about her account from the State Bank of India , Chanpatia Branch, then she found that accused Ramashish Sharma had withdrawn money from her account by two cheques on 20.03.2010 amounting to Rs. 1,26,000/- and on 26.03.2010 amounting to Rs. 63,000/- and got transferred the said amount in his account No. 30382407256.

5. Learned counsel for the petitioner submits that, first of all, the complaint was sent to the police for registering the FIR thereafter the police, after investigation, having found the case not true, submitted final form, but on protest petition, the learned Magistrate proceeded for enquiry thereafter has passed the impugned order, but there is no *prima facie* material showing any kind of cheating done by the petitioner, so it is an abuse of process of the court, therefore, prays for quashing the impugned order.

6. Learned counsel appearing on behalf of the O.P. No. 2

submits that three witnesses have been examined during the enquiry stage out of them, witness no. 3 is an independent witness and all have stated that this petitioner, in order to get the claim money of the mother of the complainant, fraudulently obtained 06 blank cheques of the complainant and after withdrawing the amount, deposited the same in his account. He further submits that there is documentary evidence also available in this case i.e., the statement of account of the complainant, which shows that the petitioner, having withdrawn the amount of Rs. 1,26,000/- and Rs. 68,000/- respectively from the account of the complainant, got transferred in his A/c No. 30382407256 with State Bank of India, Bettiah and it is settled principle of law that the only material to be considered by the Magistrate is the evidence on record available during the enquiry stage and not to consider the case diary of the police wherein police submitted final form without cogent reason. A copy of the said document was produced before the Court by the learned counsel for the O.P. No. 2 showing the amount transferred in the account of the petitioner.

7. Considering the rival submissions of the parties and on perusal of the statement of the complainant adduced on solemn affirmation as well as the statement of the enquiry witnesses and the documents produced by the learned counsel for the O.P. No. 2, a

*prima facie* case, under Sections 403, 417 and 504/34 of the Indian Penal Code, appears to be made out against the petitioner in order to put him on trial. Therefore, finding no merit in this case, this quashing petition is dismissed.

**(Arun Kumar, J)**

Sujit/-

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