

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53555 of 2013

Arising Out of PS.Case No. -611 Year- 2004 Thana -AURANGABAD COMPLAINT CASE
District- AURANGABAD

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1. Ajay Kumar Singh Son Of Shree Ghura Singh Resident Of Village And
P.S. - Jamhore, District - Aurangabad, Bihar

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mahendra Prasad Son Of Late Ram Chandra Prasad Resident Of Village
- Haspura, P.S. - Haspura, District - Aurangabad

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Satyabir Bharti
For the Opposite Party/s : Mr. B.N.Panday (App)
For the opposite party no. 2 : Mr. G.P. Bimal

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 02-02-2017 Heard the parties.

Petitioner seeks quashing of the order dated 08.11.2004 passed by the Court of Shri. V.V. Gupta, learned Judicial Magistrate, 1st Class, Aurangabad in Complaint Case No. 611 of 2004, by which he has ordered for issuance of process against the petitioner under Section 420 and 465 of the Indian Penal Code.

Prosecution case in short is that the complainant, namely, Mahendra Prasad filed a complaint petition before the learned Chief Judicial Magistrate, Aurangabad alleging therein *inter alia* that he is the license dealer of the country made liquor and petitioner is a retail seller of country made liquor who used to



purchase country made liquor from the complainant. It is alleged that the petitioner-accused person gave a cheque of Rs. 4,10,000/- vide cheque no. 686248 dated 29.04.2004 to complainant against the purchase of country made liquor. The said cheque was presented by the complainant before the bank, which was dishonoured by the bank with an endorsement that the cheque and the account has been cancelled by the petitioner-accused person and there is no amount available in the account of the accused. Thereafter, the complainant sent a legal notice to the petitioner for payment of the aforesaid amount but the petitioner denied to pay the said amount.

On the basis of aforesaid facts, Complaint Case No. 611 of 2004 was registered and the case was transferred to Shri V.V. Gupta, learned Judicial Magistrate – 1st Class, Aurangabad for enquiry and trial and after enquiry the learned Magistrate finding the case true, ordered for issuance of process against the petitioner under Section 420 and 465 of the Indian Penal Code, which is under challenge in the present application.

It has been submitted on behalf of the petitioner that from perusal of the complaint petition as well as materials available on record, it appears that the case should have been lodged under Section 138 of the N.I. Act but instead of that the case has been



lodged under Section 420 and 465 of the Indian Penal Code and the learned Magistrate has ordered for issuance of process under the aforesaid Sections of 420 and 465 of Indian Penal Code. Furthermore, now the parties have compromised the case and the petitioner has already paid the alleged amount to the complainant and a petition to that effect has already been filed in the Court of Shri Binay Shankar, learned Judicial Magistrate -1st Class, Daudnagar. In such view of the matter the impugned order, issuing process against the petitioner deserves to be quashed.

Heard learned counsel for the State as well as learned counsel appearing on behalf of complainant. It has been submitted on behalf of the complainant that a joint petition of compromise between the parties, has already been filed in the court below and a certified copy of that has already been filed before this Court showing that the whole amount has already been paid to the complainant and, therefore, the parties are no longer interested in pursuing the case.

Having heard both sides, it appears from perusal of record that the parties have already settled their disputes and the alleged amount has already been paid by the petitioner to the complainant, a certificate to that effect has also been annexed as annexure -3 to this application and also Section 420 of the Indian



Penal Code is compoundable; so far Section 465 of the Indian Penal Code is concerned, considering the facts and circumstances of the case, no case is made out under the above Section of Indian Penal Code.

In such view of the matter, this application is allowed, the order dated 08.11.2004 passed by the Court of Shri. V.V. Gupta, learned Judicial Magistrate, 1st Class, Aurangabad in Complaint Case No. 611 of 2004 is hereby set aside.

(Vinod Kumar Sinha, J)

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