

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9553 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- GAYA

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Purushottam Kumar Sinha S/O Trimohan Kumar Sinha Resident Of Mohalla- Ram Sagar, P.S- Civil Line, Distt- Gaya.

.... Petitioner

Versus

1. The State Of Bihar
2. Kamal Kishor Prasad S/O Late Hari Singh Proprietor Of Kamal Agency, Gewal Bigha, Durga Asthan, P.S- Civil Line, Distt- Gaya.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Dharmendra Kumar Sinha, Advocate
For the State : Mr. Ajay Kumar No.I, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

C.A.V. JUDGMENT

Date: 30-08-2017

The quashing application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 challenging order dated 29.1.2009 passed by Judicial Magistrate 1st Class, Gaya in Complaint Case No.198 of 2008 whereby he has taken cognizance of the offence under Sections 406 and 420 of the Indian Penal Code as well as under Section 138 of N.I. Act, 1881.

2. The complainant's case as narrated in the complaint petition in brief is that on 14.4.2008, the accused/petitioner entered into a contract with the complainant who deals in bamboo business for supplying bamboos more than 2000 in numbers and ballas for the period 14.4.2008 to 25.4.2008 the total value of hired article is



1,20,050/- the rent for hired period was fixed Rs.13,000/-. On 14.4.2008 on the day of entering into contract the accused paid Rs.3,000/- in cash against the rent amount and a cheque of Rs.25,000/- for payment of rest rent amount with assurance to pay rest rental charges in cash on 25.4.2008, thereafter, the cheque would be returned back to him; even after expiry of the period neither hired articles were returned back to him nor rent was paid in cash so he presented the cheque earlier given to him by the accused in his Bank on 2.6.2008 but cheque was dishonoured and returned back to the complainant on 24.6.2008 with remark that amount could not be credited due to insufficient fund in the account of borrower. Consequently, on 2.7.2008 complainant sent legal notice to the accused to pay the cheque amount to him which was received by him on 8.7.2008 but within 15 days the amount was not paid back so filed the complaint case on 23.7.2008.

3. Learned counsel appearing on behalf of the petitioner submits that false allegation has been levelled in the complaint, the rent of the hired articles was only Rs.3,600/- out of which Rs.3000/- was paid in cash only Rs.600/- remained due. As far as issuance of cheque of Rs.25,000/- is concerned, that was given to the complainant as a security. It is also contended that the desired number of bamboos and ballas were not supplied and the supplied articles were returned



back to the complainant, so in fact the petitioner was cheated by the complainant. The petitioner requested to return the cheque given in security but it was not returned so he filed a complaint case no.887 of 2008 on 9.6.2008 prior to the filing of the present complaint, so no prima facie case under Sections 406 and 420 of the I.P.C. and 138 of N.I. Act is made out.

4. Learned Additional Public Prosecutor supported the impugned order submitting that prima facie case of cheating, breach of trust and prima facie case Section 138 of N.I. Act is made out in view of allegation levelled in the complaint petition.

5. Having considered rival submissions and on perusal of record, it appears that the allegations levelled in the complaint petition do constitute a prima facie case under Sections 406 and 420 of I.P.C. as well as under Section 138 of N.I. Act. The defence of the petitioner in this case cannot be considered at this stage. The complainant filed the case on 9.6.2008 whereas the complainant of the present case had submitted the cheque in the Bank for payment on 2.6.2008. The crux of the allegation is that the complainant supplied bamboos and ballas to the accused a proprietor of a tent house for certain period on rent. A part payment of rental charges was made in cash but for rest amount cheque of Rs.25,000/- was issued by the accused in favour of the complainant for discharge of his liability. However, he promised to



pay the rent later on in cash, thereafter, cheque would be returned back. Further allegation is that neither the articles supplied on rent to the accused was returned back nor the remaining amount of the rental charges was paid in cash, so he presented the cheque which got bounced. Thereafter, he has followed the procedure of giving notice, within time as per Section 138 of N.I. Act. Even after receipt of notice within 15 days the cheque amount was not paid by the borrower to the payee. Moreover, the petitioner/accused had issued the cheque for discharge of his existing liability of paying rent.

6. In **Suryalakshmi Cotton Mills Ltd. Vrs. Rajvir Industries Limited and others reported in [(2008)13 SCC 678]**, the Supreme Court has made following observations explaining parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure :

“ 17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well known legal principles involved in the matter.

22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to



whether continuance of the criminal proceedings would amount to an abuse of process of Court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.”

7. In the present case also, the defence taken by the petitioner/accused cannot be taken into consideration as the same is disputed question of fact the truthfulness or falsehood may only be ascertained in trial.

8. Accordingly, finding no merit in this application, it stands dismissed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	AFR
CAV DATE	17-05-2017
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