IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36294 of 2011

Arising Out of PS.Case No. -6 Year- 2011 Thana -null District- NALANDA (BIHARSHARIFF)

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1. Rakesh Kumar
2. Rajesh Kumar, both are son of Prabhudeo Narain Verma R/O. Biharkunj Apartment, Boring Canal Road, Anandpuri Patna, Dist.-Patna At Present Right Town,1604, Jabalpur, Near M.H. Hospital, Jabalpur (M.P.)

.... Petitioners

Versus

1. The State Of Bihar
2. Arjun Prasad, son of late Chamari Sah, resident of Karuna Bag, Polic Station Soh Saray, Dsitrcit Nalanda

.... Opposite Parties

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Appearance :
For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Advocate
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT
Date: 21-11-2017

Heard the learned counsel for the petitioners and the learned A.P.P for the State.

No one appeared for the opposite party no.2.

This criminal miscellaneous has been filed for quashing the order dated 08.07.2011 passed by learned Chief Judicial Magistatate, Biharsharif at Nalanda in Sohsarai P.S. Case No. 06 of 2011 (G.R. No. 191 of 2011) whereby and whereunder cognizance has been taken for the offences under Sections 420 and 406 of the Indian Penal Code against the petitioners and the record was transferred to the Court of Sri Vipin Kumar, J.M. 1st

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Class, Nalanda.

The opposite party no.2 filed a written report dated 28.01.2011 to officer in-charge Sohsarai police station., alleging therein that the petitioners are proprietors of Oneli Fashion Private Limited Company. The informant has taken agency named as Ma Traders of Oneli Fashion in Sohsarai, District Nalanda from the petitioners and an agreement was executed. Further security money of rupees five lacs (Rs. 5,00,000/-) was deposited and it was agreed that the informant will be given either 28 % or Rs. 40,000/- per months by the firm but the informant was neither supplied articles nor he was paid the amount as per the agreement and when the informant started making demand of his security money then he was called at Patna and was asked not to take money otherwise to loss his life thereafter the informant returned. The petitioners started making negotiations with other persons for opening of show-room in Biharsharif and when the same was came in knowledge of the informant, he met with the accused persons and requested to return the money but again threatening was given. After registering of the case, the investigation started and after completing investigation chargesheet and supplementary chargesheet have been submitted against the petitioners and accordingly, cognizance was taken

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under the impugned order.

On behalf of petitioners it is submitted that it was purely a business transaction and there is no ingredient of deception so no offence under Section 420 of the Indian Penal Code is made out. Further no offence under Section 406 of the Indian Penal Code is made out. The petitioner no.2 has given legal notice to the opposite party no.2 and the informant opposite party no.2 replied the said notice vide Annexure- 4, at page 28 of this application, wherein business transaction has been admitted and, as such, no offence as alleged is made out. From reply of legal notice sent by the informant the case as made out by the informant in his written report becomes false. In view of admitted business transaction the impugned order taking cognizance is bad in law and is fit to be set aside. The learned counsel for the petitioners has relied upon decisions reported in ***2004 vol. 4 PLJR page 598*** in the case of ***Amit Prakash & Ors. Vs. the State of Bihar & Anr.,*** and ***2006 vol. 4 PLJR page 106*** in the case of ***M/s Steel Authority of India Limited & Ors Vs. the State of Bihar & Anr.***

On the other hand, the learned A.P.P. submits that during investigation sufficient materials have been found and accordingly, chargesheet has been submitted against the

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petitioners under Sections 406 and 420 of the Indian Penal Code. The learned Chief Judicial Magistrate after perusal of case diary and chargesheet took cognizance under the aforesaid sections, so there is no need of any interference at this stage. At this stage, the defence of the accused cannot be considered rather the same can be considered at the appropriate stage.

Having considered the submissions urged at the Bar going through the record and annexures to the petition it is manifest that in reply notice of the informant sent to the Advocate of petitioner no.2 business transaction is admitted. The dispute appears is of accounting and, as such, lodging of F.I.R. by the informant and submission of chargesheet and further taking cognizance accordingly, appears misuse of the process of the law. The ruling relied upon by the learned counsel for the petitioners supports the case of the petitioners.

In the result, the impugned order dated 08.07.2011 stands quashed and this criminal miscellaneous is hereby allowed.

(Jitendra Mohan Sharma, J.)

Rajiv/-

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CAV DATE	
Uploading Date	23.11.2017
Transmission Date	23.11.2017

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