

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32490 of 2013

Arising Out of PS.Case No. -731 Year- 2010 Thana -PATNA COMPLAINT CASE District-
PATNA

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Mrs. Meera Tripathi W/O Mr. Madan Mohan Tripathi Resident Of E-119, Vidya Dham Ground Floor, P.O. Lohia Nagar, P.S. Kankarbagh, P.C. Colony, Kankarbagh, Town And District Patna.

.... Petitioner.

Versus

1. The State Of Bihar.
2. Kumar Satya Priya S/O Mr. Satya Prakash Tripathi Resident Of Vidya Dham Ist Floor, House No. E-119, P.C. Colony, Kankarbagh, P.O. Lohia Nagar, P.S. Kankarbagh, Town And District Patna.

.... Opposite Parties.

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Appearance :

For the Petitioner : Mr. Prabhat Ranjan Singh, Advocate.
For the Opposite Parties : Mr. Raj Kumar Rajesh, Advocate
Mr. Girish Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 21-08-2017

Heard learned counsel for the petitioners and learned counsel,
appearing for opposite party No. 2.

This petition has been filed to quash the order dated 02-02-2013 passed by learned Judicial Magistrate-Ist Class, Patna in Complaint Case No. 731(C) of 2010 by which, the learned Magistrate has rejected the discharge petition filed by the petitioner under Section-245 of the Cr.P.C.

As per allegation in the complaint petition, the complainant had given Rs. 60,000/- (sixty thousand) to the petitioner on the occasion of treatment of her son Ravindra Nath Tripathi and grand son Akash



Tripathi with assurance that the petitioner will return the amount within six to twelve months. It is further alleged that when the complainant demanded his money, the petitioner issued a cheque of State Bank of India bearing Cheque No. 223573 for an amount of Rs. 60,000/- in favour of the complainant. The complainant deposited the cheque in his account in Canara Bank for realization of the amount, but the same was returned by the bank with endorsement “insufficient fund”. Thereafter, the complainant made several request with the petitioner to make payment of the amount, but he did not make payment. The complainant filed the present complaint and cognizance has been taken in the case for the offence under Section-406 of the Indian Penal Code and 138 of N.I. Act.

Counsel for the petitioner has submitted that both parties are on litigating term. There is no any evidence that an amount of Rs. 60,000/- was paid by the complainant to the petitioner. The cheque book was used by father of the complainant and the same has been misused just to harass the petitioner on account of family dispute.

Counsel for the petitioner has further submitted that there is only signature of the petitioner on the aforesaid cheque. The figure and words on the cheque have been written in different handwriting.

Counsel for opposite party No. 2 has submitted that all these things are required to be looked into at the time of trial. The court



below at the stage of hearing petition u/S 245 of the Cr.P.C. is only required to see whether there are sufficient materials to proceed in the trial against the accused or not. He relied upon a decision of Hon'ble Supreme Court reported in **2015(2) PLJR 321 (SC) Sonu Gupta Vs. Deepak Gupta**. The Hon'ble Supreme Court has held in the aforesaid judgment that *even when there are materials raising strong suspicion against the accused, the court can reject a prayer for discharge and grant an opportunity to the prosecution to bring on record the entire evidence so that case of both sides may be considered appropriately on conclusion of trial.*

This court finds that the court below has given sufficient reason in the impugned order while rejecting the petition for discharge filed by the petitioner u/S 245 of the Cr.P.C.

Therefore, this court does not find any illegality in the impugned order. Accordingly, this Cr. Misc. Application is dismissed.

The court below is directed to proceed in the trial in accordance with law.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	31-8-2017
Transmission Date	31-8-2017

