

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49747 of 2013

Arising Out of PS.Case No. -125 Year- 2011 Thana -SITAMARHI COMPLAINT CASE District-
SHEOHAR

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1. Subodh Kumar, S/O Mahendra Sah, Resident of Village- Ashogi P.S- Purhania,
Distt- Seohar

2. Prem Shankar, S/O Mahadeo Sah, R/O Vill- Sheohar, W. No. 6, P.S+ Distt-
Shoeohar

.... Petitioners

Versus

1. The State Of Bihar

2. Nan Kishore Prasad, S/O Shri Sheoji Sah, Resident of Village+ P.S+ Distt-
Sheohar

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Alok Kumar Jha, Adv.

For the State : Mr. Ram Naresh Rai, APP

For O.P. No. 2 : Mr. Pushpendra Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 17-01-2017

Heard the learned counsel for the petitioners and the State.

2. This is a petition for quashing the order, dated 27.06.2013, passed by Judicial Magistrate, Sheohar, in Tr. No. 605 of 2013 arising out of Complaint Case No. 125 of 2011.

3. The petitioners are accused along with some other co-accused named in the Complaint Case No. 125 of 2011 brought by opposite party no. 2, Nand Kishore Prasad.

4. By the impugned order, the petitioners and others have been summoned to face trial for offence under Section 420/34 of the Indian Penal Code.

5. Submission of the petitioners is that a bare perusal of the complaint petition and statement of witnesses, examined during enquiry under Section 202 of the Criminal Procedure Code, would reveal that no offence under Section 420 of the Indian Penal Code is made out.

6. According to complaint petition, co-accused, Ashok Kumar approached the complainant for loan of rupees five lakhs for treatment of his wife. The complainant provided cash of rupees one lakh on 15.03.2011 to co-accused, Ashok Kumar. The complainant also provided four cheques of rupees one lakh each. One cheque was in the name of petitioner, Subodh Kumar, and another was in the name of petitioner, Prem Shankar. Other cheques were in the name of other co-accused person. Co-accused, Ashok Kumar, had promised to sell his



land in the name of complainant in lieu of advanced money. Later on Ashok Kumar did not execute the sale deed, hence, the complainant issued instruction to the Bank to stop payment of issued cheques.

7. The petitioners issued legal notice to the complainant for bouncing of the cheques aforesaid. The complainant alleged that the legal notice was just to tarnish the image of the complainant.

8. Submission of the petitioner is that the aforesaid allegation does not disclose about any cheating because legal notice is not an offence and that was legally and validly sent, as required under the Negotiable Instrument Act, on dishonour of cheques, issued by the complainant.

9. Learned counsel for the opposite party no. 2 also concedes that no offence is made out against the petitioners. However, submits that once cognizance has been taken, the petitioners should face trial.

10. Since, there is no offence disclosed against the petitioners, their criminal prosecution is an abuse of the process of the Court.

11. Hence, the impugned order, so far it affects the petitioners, is not sustainable in law. Accordingly, the same is **set aside** and this application stands **allowed**.

(Birendra Kumar, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
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