

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30269 of 2012

Arising Out of PS.Case No. -183 Year- 2006 Thana -null District- KISANGANJ

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Md. Rahman Ali, son of Kasim Ali, resident of Airport More, Maszid Para, Bagdora, P.S. Bagdora, District-Darzilling (W.Bengal).

.... Petitioner

Versus

1. The State of Bihar &
2. Md. Allauddin, son of Late Farjand Ali, resident of village-Dhulabari, P.S. Thakurganj, District-Kishanganj.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Madanjeet Kumar, Advocate

For the Opposite Parties : Mr. Anil Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-05-2017

Heard both sides.

2. The petitioner seeks quashing of order dated 17.01.2008 passed by Sri S.K.Manjhi, Judicial Magistrate, Ist Class, Kishanganj in Complaint Case No.183 (C) of 2006 whereunder finding prima-facie case for the offence under Sections 406, 420/34 of the IPC, the learned Magistrate ordered for issuance of summons against the petitioner.

3. The facts, in brief is that the Opposite Party No.2 filed a complaint case on the file of CJM, Kishanganj alleging therein that he along with this petitioner and few others entered into a partnership business of manufacturing bricks under the name and style of 'Maruti bricks.' The petitioner and other co-accused took an amount of R.3,00000/- from the complainant and acquired seven acre land on lease. The petitioner managed the affairs of brick business and from the earning of said business, they acquired 5.67 acres land by virtue of registered sale deeds no.1682, 1706, 1707, 1708, 1709 dated 02.03.1994. The petitioner



committed fraud and got all the sale deeds executed in his name as well as in the name of Ranjit Ghosh and Shiv Prasad Dutta. Subsequently, he got the said land transferred in his name from Ranjit Ghosh. The petitioner continued the business and without furnishing the details of income misappropriated the income of said partnership business to the tune of Rs.6,50,000/-. The accused persons dissolved the partnership business and third partner was inducted. The accused persons thus misappropriated the amount by grabbing the income received by the said partnership business.

4. The counsel for the petitioner submits that it was the complainant who committed fraud, forgery and misappropriated the income of the partnership business. The petitioner along with other partners had filed a complaint case against the complainant Opposite Party No.2 and other co-accused vide complaint case no.106 of 2006 in which after inquiry the complainant was summoned vide order dated 14.12.2007. The complainant filed a criminal miscellaneous no.41232 of 2008 wherein it was alleged that the dispute between the parties was mainly a civil dispute relating to non-compliance of agreement entered into by the parties. After hearing both sides, the cognizance order passed in Complaint Case No.106 of 2006 was quashed and Cr. Miscellaneous was allowed by one of the coordinate Bench of this Court on 09.02.2012. The present case is of similar nature and so the same also deserves to be quashed.

5. The APP on the other hand opposed the submission.

6. On perusal of complaint petition and material on record, as well as order dated 09.02.2012 passed in Crs.Misc.No.41232 of 2008, I find that both parties had entered into an agreement to run a brick-kiln business. The said partnership business subsequently dissolved. Both parties assert that their partners have misappropriated the income of partnership business and did not



furnish the accounts. The dispute between the parties appears to be a purely civil dispute. The averments made in the complaint petition and the materials on record do not attract any penal provision or attracts the ingredients of offence under Sections 406 and 420 of the IPC. The dispute requires determination of the legal right of the parties which is admittedly covered by an agreement. As such, the impugned order summoning the petitioner appears to be an abuse of the process of the Court.

7. Accordingly, the impugned order dated 17.01.2008 passed in Complaint Case No.183 of 2006 by Judicial Magistrate, Ist Class, Kishanganj is quashed and this application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

