

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53165 of 2013

Arising Out of PS.Case No. -441 Year- 2012 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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1. Binod Kumar @ Mithu S/O Raghbir Prasad Resident Of Village- Bari Pahari,
Mansoor Nagar, P.S.- Sohsarai, District- Nalanda

2. Raghbir Prasad S/O Late Barho Mahto Resident Of Village- Bari Pahari,
Mansoor Nagar, P.S.- Sohsarai, District- Nalanda

3. Rajesh Kumar Singh S/O Late Ram Kishore Prasad Resident Of Village-
Imamganj, P.S.- Rahui, District- Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar

2. Rajendra Prasad S/O Late Rameshwar Mahto Resident Of Village- Bishunpur,
P.S.- Manpur, District- Nalanda

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Bhagar

For the Opposite Party/s : Mr. Najir Ansari, APP

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

Date: 20-06-2017

Heard learned counsel for the parties.

Petitioners, by means of this application under section 482 of the Code of Criminal Procedure, have invoked the inherent jurisdiction of this Court with prayer to quash the order dated 28.09.2013, passed by Smt. Rachna Srivastava, Judicial Magistrate, 1st Class, Nalanda at Biharsharif, in Complaint Case No. 441 C of 2012, whereby cognizance has been taken against the petitioners for the offences under section 379, 467, 468, 420/34 of the Indian Penal Code.



The contention of the learned counsel for the petitioner is that petitioner no. 3, Rajesh Kumar Singh had filed a complaint Case No. 386 C of 2012 in which cognizance has been taken (Annexure-1). In retaliation, the present complaint has been filed (Annexure-2). Learned Magistrate dismissed the complaint under section 203 Cr.P.C. (Annexure-3). Complainant preferred revision against the order of the Magistrate which was allowed and the matter was remitted back to the Court below vide order dated 17.07.2013 passed in Cr. Revision No. 227 of 2012 (Annexure-4). Thereafter learned Magistrate took cognizance against the petitioners without following the mandatory provision under section 398 Cr.P.C. learned counsel submits that cognizance has been taken without application of mind. Thus, the same deserves to be quashed.

Learned counsel appearing for the opposite party no. 2 opposes the application by contending that there are allegations against the petitioner and no ground for quashing the order taking cognizance is made out.

From perusal of the material on record and looking into the facts of the case at this stage, it is evident that the order taking cognizance dated 28.09.2013 mentions only that in light of the order passed in Cr. Revision No. 227 of 2012 cognizance is taken against the accused persons under sections 379, 467, 468, 420/34 I.P.C.



Revisional Court without setting aside the order dated 26.06.2012 remanded the matter back to rewrite fresh order after verifying the cheques in question by an handwriting expert as to whether column filled in the name, amount and date by same person who signed the cheque or by different persons whereas the case itself was that complainant's two cheques on which he had put his signatures only were stolen. In such situation, whenever name, amount or date is filled it has to be in the handwriting of different person. There is no need to verify the handwriting by a handwriting expert. As such, opinion of the revisional Court was not correct and the enquiry ordered was also not required. Further, earlier order of the Magistrate, dated 26.06.2012 (Annexure-3), was a well reasoned order. The Magistrate Court was of the clear view that complainant did not lodge any first information report with regard to missing of cheques and only on receiving the legal notice in order to save his skin the complainant has lodged the present prosecution. The Court was of the view that this case has been lodged after thought, and as such, dismissed the complaint. Nothing new has been brought before this Court on behalf of the opposite parties so as to warrant interference of this Court.

In view of the discussions made above, the order taking cognizance dated 28.09.2013 as well as the order of the revisional



Court whereby enquiry has been ordered under section 398 Cr.P.C.
being not sustainable in law are, hereby, quashed.

The application accordingly stands allowed.

(Arvind Srivastava, J)

Manish/-

AFR/NAFR	AFR
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