

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25821 of 2013

Arising Out of PS.Case No. -112 Year- 2012 Thana -DURGAWATI District- BHABHUA
(KAIMUR)

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Ramsinghasan Singh @ Sidharth S/O Ramadhin Singh, resident Of Village-
Bhabhua, Ward No. 2, P.S.- Bhabhau, District- Kaimur At Bhabua

.... Petitioner

Versus

1. The State Of Bihar
2. Nand Kishor Singh S/O Tufani Singh Resident Of Village- Akodhi Mela, P.S.-
Durgawati, District- Kaimur

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Amarendra Kumar Pathak, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For O.P. No. 2	:	Mr. Satyendra Pandey, Advocate Mr. Dhaneshwar Prasad Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-04-2017

Heard Mr. Amarendra Kumar Pathak, learned counsel
for the petitioner, learned counsel for opposite party no. 2 and
learned Additional Public Prosecutor for the State.

2. This application under Section 482 of the Code
of Criminal Procedure, 1973 (for short 'Cr.P.C.') has been filed for
quashing of the order dated 04.04.2013 passed by the learned Chief
Judicial Magistrate, Bhabhua in Durgawati P. S. Case No. 112 of
2012 by which after taking cognizance of the offences under



Sections 406 and 420 of the Indian Penal Code (for short 'IPC')
summon has been issued against the petitioner.

3. Initially, a complaint was registered which was referred to the police under Section 156(3) of the Cr.P.C. for investigation, pursuant to which Durgawati P. S. Case No. 112 of 2012 was registered against the petitioner and three others for the offences punishable under Sections 406, 420 and 504/34 of the IPC.

4. After completion of investigation, the police submitted final form holding the accusation to be false against three others, but the petitioner was sent up for trial, pursuant to which the impugned order dated 04.04.2013 has been passed by the learned C.J.M., Bhabhua.

5. Challenging the legality of the aforesaid order, learned counsel for the petitioner submitted that the admitted case of the informant is that he executed certain works assigned to him by the petitioner for which he was promised to be paid Rs.1,80,000/- but, after completion of works, he paid he was paid only Rs.1,45,000/- only vide two cheques issued on different dates. He submitted that even if the entire allegations are accepted to be true, no offence punishable under Sections 406/420 of the IPC would be made out against the petitioner, as the ingredients of the offences under Sections 406 and 420 of the IPC are completely



lacking in the present case.

6. Mr. Dhaneshwar Prasad Gupta, learned counsel for opposite party no. 2 submitted that it is true that there was an oral agreement between the parties and the informant had executed certain works under the order of the petitioner for which the entire payment was not made to him. He submitted that the allegation of non-payment of the due amount of Rs.35,000/- amounts to breach of contract and the same would certainly attract the ingredients of the offences punishable under Sections 406 and 420 of the IPC.

7. Learned Additional Public Prosecutor for the State has supported the contentions of the learned counsel for opposite party no. 2.

8. I have heard learned counsel for the parties and perused the record.

9. I find substance in the argument advanced by the learned counsel for the petitioner.

10. Section 406 of the IPC prescribes punishment for the offence of 'criminal breach of trust' as defined under Section 405 of the IPC whereas Section 420 of the IPC prescribes punishment for the offence of 'cheating' as defined under Section 415 of the IPC.

11. Looking at the allegations made in the FIR, I am



of the considered opinion that it is a pure and simple case of money claim based on oral agreement between the parties. There is no allegation that the petitioner intended to cheat the complainant right from the beginning. A mere failure to keep up promise subsequently cannot be presumed to be as an act leading to cheating or criminal breach of trust. The complainant has given a cloak of criminal offence to a dispute, which is essentially of civil nature.

12. In the opinion of this Court, under the facts and circumstances of the case, allowing the prosecution to continue would amount to an abuse of the process of the Court.

13. Accordingly, impugned order dated 04.04.2013 passed by the learned Chief Judicial Magistrate, Bhabhua in Durgawati P. S. Case No. 112 of 2012 is quashed. Consequently, Complaint Case No. 934 of 2012 and all its proceedings are also quashed.

14. The application stands allowed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.04.2017
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