

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32829 of 2016

Arising Out of PS.Case No. -3461 Year- 2004 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Ashok Jha @ Ashok Kumar Jha, Son of Maheshanand Jha
 2. Shashikant Jha, Son of Late Bindeshwari Jha,
Both are Ex-Directors of M/S Adarsh Paper Board Company (P) Ltd.
M-26 Adarsh Paper Ganesharia Adityapur Industrial Area, Jamshedpur,
Presently resident of 193/B Tuild Giri, P.S.- Golmuni, Dist-
Jamshedpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Bihar State Credit and Investment Corporation Ltd. State of Bihar
and Jharkhand, 4th floor Indira Bhawan, Boring Canal Road, Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Jha, Advocate
For the State : Mr. Sri Sunil Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 04-05-2017 Heard learned counsel for the petitioner and Mr. J. N.
Thakur, learned counsel for the State.

The present application has been filed for quashing of
the order dated 21.12.2004, passed by the learned CJM, Patna, in
Complaint Case No.346/2004, whereby, the process has been
directed to be issued after cognizance being taken for the offences
punishable under sections 403, 406, 409, 420, 425, 504, 379 and
120B of the Indian Penal Code.

The prosecution case is that the petitioners took loan
of Rs.11.35 lacs on different occasion from the complainant, the



Bihar State Credit and Investment Corporation Ltd. (hereinafter referred to as 'the Corporation'), to establish their unit at Jamshedpur, but they failed to repay the loan amount which ultimately became outstanding to the tune of Rs.135.86 lacs till 2004.

It is submitted by learned counsel for the petitioners that admittedly, the petitioners became defaulter, but ultimately the loan amount was realized by the Corporation. Initially, the complainant Corporation initiated Certificate Case No.BICICO/132/2002. The petitioner challenged the same by filing CWJC No.5209/2003, wherein, a Bench of this Court vide order dated 06.05.2004, quashed the certificate case. However, the liberty was given to the complainant to proceed to realize the dues by moving the appropriate forum in accordance with law. It is further submitted that after six months of the passing of the order in the aforesaid writ petition, the present complaint was maliciously filed on 21.12.2004.

In the considered opinion of this Court, at the time of exercising jurisdiction under Section 190(1)(a) of the Code of Criminal Procedure, the court has only to see whether a prima facie case is being made out. Useful reference may have to the case of *Sonu Gupta Vs. Deepak Gupta & Ors.* reported in 2015(2)



PLJR (S.C.) 321 , relevant portion whereof reads as follows:-

"7. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are



absolutely insufficient for framing of the charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial."

Moreover, the impugned order dated 21.12.2004 was challenged before this Court by filing the present application on 03.08.2016 and above all there is nothing on record to suggest the present stage of trial.

In the circumstances, this Court is not inclined to interfere.



Accordingly, this application is disposed of with liberty to the petitioners to raise all the contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

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