

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26256 of 2011

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Santosh Kejriwal son of Sri Raghunandan Prasad Kejriwal, R/o Anand Chikitsalay Road, P.S.- Kotwali Town, District- Bhagalpur Petitioner
Versus

1. The State of Bihar
 2. Purushottam Kumar Choudhary, Proprietor M/s Baba Tex, Shivalaya Market, Ashok Raj Path, P.S.- Pirbahore, District- Patna
..... Opposite Parties
- =====

Appearance :

For the Petitioner/s : Mr. Gautam Kr. Kejriwal, Advocate
Mr. Aishwarya Riti, Advocate
Mr. Mohit Agrawal, Advocate
For the Opposite Party/s : Mr. Matloob Rab, APP-34

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT

Date: 11-04-2017

This Criminal Miscellaneous application has been filed for quashing the order dated 22.12.2010 passed by Sri Krishna Kumar, the then Judicial Magistrate Ist Class, Patna in Complaint Case No. 3105 (C) of 2010 whereby and whereunder cognizance has been taken against the petitioner under Sections 406 and 417 of the Indian Penal Code and summons have been ordered to be issued against the petitioner and the co-accused.

2. Heard learned counsel for the petitioner and learned counsel representing the State.

3. In spite of valid service of notice, O. P. No. 2 has not appeared.

4. From perusal of the complaint petition the gist of allegation is that the complainant and accused persons namely, Vishnu Kedia and the petitioner were in business terms and Vishnu Kedia and the petitioner used



to take clothes from the wholesale shop of the complainant on credit and used to pay the price later on and in that way from 01.06.2007 to 11.03.2008 the petitioner and co-accused took clothes amounting to Rs. 1,48,996/- and out of that paid Rs. 90,000/- only and rest Rs. 58,996/- was not paid and in that way they committed breach of trust.

5. Submission is that from perusal of the complaint petition, statement of complainant on solemn affirmation and the statement of inquiry witnesses it reveals that the amount was taken during business transaction and according to complainant, some dues remained with the accused persons and for that civil remedy is there. From the very inception there was no intention to commit breach of trust rather after calculation, according to the complainant, amount of Rs. 58,996/- remained dues.

6. Learned APP, on the other hand, submits that learned Magistrate after careful consideration of the materials available on the record has passed the impugned order and the same needs no interference of this Court.

7. On careful analyzing of the statements of the parties and on perusal of the records it appears that the complainant in the present case is wholesale cloth merchant and the petitioner and co-accused were retailer and were taking clothes on credit since long and several times they have returned the amount but the amount of Rs. 58 thousand and odds remained due. The entire gamut of allegation hovers around the dispute with respect to a settlement of an account and return of dues. In such an event, it is difficult to fasten any criminal liability upon anyone and specially to the



petitioner.

8. The Apex Court has shown the concern about the tendency in the business circle to convert a purely civil dispute into a criminal case. Such a tendency has cropped up because of the prevalent impression that the civil laws remedy are time consuming, whereas in a criminal case, because of the fear of losing the liberty, there is likelihood of immediately settlement of dispute. Such tendency has to be, nay, nipped in the bud. In the case of **Inder Mohan Goswami & Anr. vs. State of Uttaranchal & Ors. (A.I.R. 2008 S.C. 251) : 2008 (1) PLJR (SC) 82** and **Termax Limited and Others Vs. K. M. Johny and Others (2011) 13 SCC 412**, the Apex Court held that criminal prosecution ought not to be used as an instrument of harassment or seeking private vendetta with an ulterior motive. A civil matter cannot be settled by agitating the forum of criminal law.

9. Thus, on the premised reasons, the order taking cognizance dated 22.12.2010 passed by Sri Krishna Kumar, the then Judicial Magistrate Ist Class, Patna in Complaint Case No. 3105 (C) of 2010 cannot be sustained in the eyes of law and is, therefore, quashed.

10. In the result, this criminal miscellaneous application is allowed.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.4.2017
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