IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10776 of 2014

Arising Out of PS.Case No. -2835 Year- 2011 Thana -PATNA COMPLAINT CASE District-PATNA

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1. Nirmal Kumar Shrivastava S/o Late Sidh Nath Lal Resident of Flat No. 203, Lalita Nikunj Apartment, B-Area Mithapur, P.S. Jakkanpur, Patna, District-Patna.
2. Smt. Savita Srivastava @ Savita Chandra Wife of Manish Chandra, Daughter of Nirmal Kumar Srivastava Resident of Sri Ram Path, New Jakkanpur, P.S. Jakkanpur, Patna, District-Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Anjani Prasad Singh Son of Late Ravindra Prasad Singh Resident of Mohalla-Pakka Gali Pachhimi Lohanipur, Kadamkuan, P.S. Kadamkuan, Patna, District-Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjiv Sharan
For the Opposite Party/s	:	Mr. Upendra Kumar Mr. Y.C. Verma
For the State	:	Mr. Ram Naresh Rai, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-07-2017

Heard both sides.

2. This is an application under Section 482 of the Cr.P.C. for quashing the order dated 22.11.2012 passed by learned Judicial Magistrate, Patna in Complaint Case no. 2835(C) of 2011 whereunder finding *prima facie* case for the offence under Section 138 of the N.I. Act and Section 420 of the IPC, the petitioners were summoned.

3. The facts, in brief, is that the O.P. no. 2 filed a complaint case on the file of C.J.M. alleging *inter alia* that these petitioners took a friendly loan of Rs. 3 lacs from the complainant (O.P. no. 2) in the

month of March 2011 on condition to return the same within three months. The O.P. no. 2 in the month of July, 2011 demanded the said money whereupon the petitioner no. 1 Nirmal Kumar Shrivastava issued a cheque for an amount of Rs. 3 lacs in favour of O.P. no. 2. The said cheque was presented in the Bank which was dishonoured on the ground that the drawl signature differs/required. The O.P. no. 2 sent legal notice to the petitioners on 06.09.2011, but no reply was given by them. Thereafter, the complaint case was filed on 17.10.2011 and the lower court after due inquiry summoned the petitioners to face the trial as per above order.

4. The learned counsel for the petitioners submits that from the complaint petition, it is apparent that the cheque was issued by the petitioner no. 1 and so the petitioner no. 2 cannot be summoned to face trial for the offence under Section 138 of N.I. Act. His another contention is that the complaint petition is premature. The complainant did not give legal notice as required and without waiting of service report, has lodged the case. This complaint case is pre-matured and so the cognizance is bad in law.

5. The learned counsel for the O.P. no. 2, on the other hand, submits that the petitioners jointly came and took the amount giving assurance that they would return the money within three months. The petitioners and their son have cheated several people of the locality. They took money from different persons and on repeated demands the

petitioners and their son issued cheques which were dishonoured by the Bank for different reasons. The petitioner no. 1 fraudulently put his signature in different manner which did not tally with the specimen preserved in the Bank. The learned counsel filed a copy of the order dated 04.07.2017 passed in Cr. Misc. no. 31580 of 2013 and 11.04.2017 passed in Cr. Misc. no. 52650 of 2013 to show that these petitioners are in the habit of committing fraud/cheating several persons. The petitioners were summoned to face trial in several cases of similar nature. They filed petitions to quash the cognizance order which have been dismissed and so this criminal miscellaneous is also fit to be dismissed.

6. On going through the complaint petition, annexures available on record and documents produced on behalf of the O.P. no. 2, I find that the petitioners approached the O.P. no. 2 and took an amount of Rs. 3 lacs as friendly loan. It is not in dispute that the cheque was given by petitioner no. 1 was dishonoured by the Bank as his signature did not tally with the specimen of petitioner no. 1 given in the Bank. This act of petitioner no. 1 shows that he intentionally put signature which was different to his original signature given as specimen in the Bank for operating the account. The cheque was dishonoured by the Bank on 09.08.2011 and thereafter the O.P. no. 2 gave legal notice on 06.09.2011. It is true that the complainant has not mentioned the date, on which date the notice was served on the

petitioners. The petitioners in the present application have denied about service of notice upon them. Under the general clauses Act there is presumption of service of notice which are issued under Registered Post, if not returned within thirty days. There is no indication as to on which date the service of notice will be deemed to be served. The complainant filed a complaint case on 17.10.2011. The learned Magistrate after perusing the statement of complainant of S.A. and other witnesses arrived at the conclusion that a prima facie case for the offence under Section 420 of the IPC and 138 of the N.I. Act is made out against these petitioners. The petitioners will have opportunity at the time of framing of charge to raise the point as to whether offence under Section 138 of N.I. Act against the petitioner no. 2 is made out or not.

7. As such, I do not find any illegality in the impugned order amounting to abuse of the process of court for interference in inherent jurisdiction under Section 482 of the Cr.P.C. Accordingly, this application is dismissed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.07.2017
Transmission Date	20.07.2017