

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28055 of 2012

Arising Out of PS.Case No. -3626 Year- 2006 Thana -null District- PATNA

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1. Bosco Fernandes, President, M/S Orion Enterprises through is Proprietor Bosco Fernandes, S/O Joseph Fernandes, resident of Mumbai, 8/28, Marol Maroshi Road, Marol, Andheri (East) Mumbai

.... Petitioner/s

Versus

1. The State of Bihar,
2. Mahendra J. Asher, S/O Jaisingh G. Asher, resident of Sameer Niwas, 203/204, J.P. Road, Four Bungalows, Andheri (W), Mumbai-58

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. P. N. Pathak, Advocate

For the Opposite Party/s : Dr. Indihar Kumari, APP

Mr. Sharda Nand Mishra, Advocate

Mr. Dhananjay Kumar Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 28-08-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 13.02.2012 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.3626 of 2006 by which the petition filed by the petitioner under Section 245 of the Code of Criminal Procedure has been rejected.

2. Counsel for the petitioner has submitted that both the parties are resident of Mumbai, Cheque has been issued in Mumbai. Notice was issued in the name of Bosco Fernandes, Proprietor, J.C. Engineers, whereas, Cheque has been issued by the



petitioner on behalf of M/s Orion Enterprises.

3. Counsel for the petitioner has submitted that Complainant is resident of Mumbai and in the Complaint Petition he has given the address of his lawyer.

4. Counsel for the Opposite Party No.2 has appeared and submitted that the Complainant is residing in the aforesaid house in Patna. It has further been submitted that the cheque was issued in Mumbai, but the same was presented in ICICI Bank, Patna, for encashment and the same has bounced. Therefore, the Patna Court will have the jurisdiction and, accordingly, the Court below has taken cognizance in the matter.

5. Counsel for the Opposite Party No.2 has submitted that Annexure-4 (Xerox copy of the Cheque) will show that Cheque had been issued by the petitioner for and on behalf of President, Orion Enterprises, but in the Complaint Petition the petitioner has been described as Proprietor, J. C. Engineers. The Complainant has alleged that petitioner is Proprietor of J. C. Engineers. The Complainant has entered into agreement with petitioner for tyre business. He paid rupees four lacs but when the tyre was not supplied to the Complainant, he made demand and, ultimately, Cheque No.628433 dated 23.09.2006 for rupees two lac fifty thousand was issued by the petitioner in favour of the Complainant



and when the Complainant deposited the aforesaid cheque in his account in ICICI Bank, Boring Road, Patna, same got bounced. As per averment in the Complaint Petition, the petitioner is Proprietor of JC Engineers. The notice (Annexure-5) was issued to the petitioner as well as M/s JC Engineers. In the Cheque (Annexure-4), signature of the petitioner is there, which is issued in the name of the Complainant, although it has been mentioned in the Cheque President, Orion Enterprises.

6. Counsel for the petitioner has submitted that the petitioner is president of Orion Enterprises.

7. The Court below after looking into the evidence before Charge and the documents exhibited by the Complainant has found sufficient material against the petitioner to frame Charge in the case.

8. From the evidence available on record, this Court finds that cheque issued by the petitioner in the name of the Complainant has bounced.

9. Therefore, this Court does not find any illegality in the impugned order passed by the Court below.

10. Accordingly, this Criminal Miscellaneous Application is dismissed.

11. Learned Court below is directed to proceed with



the trial in accordance with law.

12. The Court below will, however, take into consideration the defence of the petitioner at the time of framing of Charge. The petitioner will be at liberty to adduce evidence in support of his defence.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13-09-2017
Transmission Date	13-09-2017

