

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13408 of 2014

Arising Out of PS.Case No. -18 Year- 2014 District- Rohtas

=====

1. Bhawneet Singh @ Bhawneet Singh Bindra S/o Late Devendra Singh @ Devendra Singh Bindra Resident of Village- Popular Carrier, By pass Road, P.O. P.S.- Chas, District- Bokaro

.... Petitioner/s

Versus

1. The State of Bihar
2. Guru Karan Singh S/o Bhupendra Pal Singh, Originally Resident of A-1/268, Janakpuri (West), P.O. P.S.- Janakpuri, District- West Delhi, New Delhi and proprietor of I.P.S. Mining and Minerals, Jaipur, Rajsthan, but falsely given his address as Osso Dham, Village- Karma, P.S.- Suryapura, District- Rohtas, in the complaint petition.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Arbind Kumar Singh

For the State : Mr. Humayu Ahmad Khan, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 21-07-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 29.01.2014 passed by the learned Judicial Magistrate, 1st Class-cum-Addl. M.-IV, Bikramganj (Rohtas) in Complaint Case no. 18 of 2014.

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

3. The facts in brief is that the complainant filed a complaint on the file of S.D.J.M., Bikramganj alleging *inter alia* that he entered into an agreement with this petitioner for purchasing four vehicles.

As per agreement, the total price of four vehicles was fixed at Rs. 73



lacs. The complainant immediately gave Rs. 5 lacs to the petitioner and an amount of Rs. 20 lacs on 29.03.2011 which was the date fixed for delivery of the vehicles. The complainant further gave a post dated cheque for an amount of Rs. 50 lacs. The vehicles which were delivered to the complainant were in worst condition and so the complainant requested the petitioner to take back the vehicles and to return the money. In spite of repeated demands, the petitioner did not return the money. The complainant further learnt that the petitioner got his cheque bounced and lodged a false case against the complainant. The petitioner has thus cheated the complainant and also committed breach of trust.

4. It has been submitted that as per agreement the petitioner supplied two machines i.e. two tippers and one Ex-350 machine with breaker. The complainant gave Rs. 5 lacs in cash to the petitioner and issued two cheques for an amount of Rs. 15 lacs and 5 lacs. The petitioner deposited the said cheque in the bank which bounced and were returned back on account of insufficient fund. The petitioner, thereafter, lodged Chas P.S. Case no. 207 of 2012 for the offence under Sections 406, 420 of IPC and 138 of the N.I. Act against the complainant. The matter was investigated and police submitted charge-sheet no. 154 dated 31.05.2013. In the said case, warrant of arrest and process under Section 82 and 83 of the Cr.P.C. were



issued. The complainant as a counter blast to the case of the petitioner has lodged the present Complaint Case no. 18 of 2014 mentioning his false address in the petition. The complainant filed an anticipatory bail application no. 261 of 2013 before the Principal District & Sessions Judge, Bokaro wherein he admitted about the supply of vehicles by the petitioner. In the said application, he has not stated regarding return of said vehicle to the petitioner. The anticipatory bail application was dismissed by the Sessions Judge. Thereafter, the complainant filed anticipatory bail application 2467 of 2013 on the same ground which was also dismissed by the Hon'ble Jharkhand High Court. The complainant filed Cr. Misc. petition no. 336 of 2014 before the Hon'ble Jharkhand High Court for quashing the criminal prosecution of the complainant. The contradictory version of complainant (O.P. no. 2) at different period shows that he anyhow wants to grab the money of the petitioner and escape from the liability of making payment with respect to the bounced cheque. The learned Magistrate has passed the impugned order without applying judicial mind and so the order is fit to be quashed.

5. The learned APP, on the other hand, opposed the submissions.

6. On perusal of the complainant petition and annexures enclosed with the application, I find that the O.P. no. 2 was noticed through both the process, but he did not appear. It appears that the petitioner



had lodged a police case bearing no. 207 of 2012 on 08.07.2012 for the offence under Section 420 and 406 of the IPC alleging therein that the complainant issued cheque for making payment although he had no money in his account. He alleged that the complainant committed breach of trust by not sending money amounting to Rs. 27,45000/-. The petitioner has annexed a copy of the anticipatory bail application no. 261 of 2013 filed on 01.05.2013 before Principal District & Sessions Judge, Bokaro. In the said bail application, the complainant had not asserted the allegation of cheating or committing breach of trust against this petitioner. The complainant filed a quashing application bearing Cr-M.P 336 of 2014. In the said application, he had not asserted about return of vehicle or any other allegation alleged in the complaint case. The complainant has filed the present complaint case on 06.01.2014 with different allegation which is contradictory to the statement given in the anticipatory bail application and quashing application. The dispute between the parties relate to business transaction and in said transaction a cheque which was given to him for supply of vehicle had bounced for which he lodged a police case.

7. In a ruling reported in Eicher Tractor Ltd. & Others Vs. Harihar Singh (reported in (2008) 16 S.C.C. 763, I find that in the said case, the appellant after issuing a legal notice, filed complaint case



against the respondent. The lower court finding prima facie case for the offence under Sections 138, 142, 141 of N.I. Act, ordered for issuance of summons against the respondent. Subsequent to the said case, respondent filed Complaint Case no. 1343 of 2004 alleging therein that the appellant had stolen the cheques and after making interpolation presented the same in Bank. The Magistrate took cognizance on 08.02.2005. The cognizance order was challenged before Hon'ble Allahabad High Court under Section 482 of Cr.P.C. which after hearing was dismissed. The matter went to Apex Court where it was allowed and proceeding against the appellant was quashed holding that the said case squarely covered within the parameters indicated in category (7) of Bhajan lal case (1999 Supp (1) S.C.C. 335).

8. The present complaint case of the O.P. no. 2 was filed after 18 months of the police case of the petitioner and during this period of 18 months, the complainant has not alleged any cheating or breach of trust in the petitions filed in the district court and Hon'ble Jharkhand High Court. The fact of this case is similar to the case decided by Hon'ble Apex Court. The factual scenario indicates that the present complaint case has been filed maliciously with an ulterior motive with a view to counter the police case lodged by this petitioner. The criminal prosecution of this petitioner, in such circumstance, would



amount an abuse of process of the Court.

9. As such, the order dated 29.01.2014 passed by the learned Judicial Magistrate, 1st Class-cum-Addl. M.-IV, Bikramganj (Rohtas) in Complaint Case no. 18 of 2014 is quashed and the Cr. Misc. application is allowed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.07.2017
Transmission Date	26.07.2017

