IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28623 of 2014

Arising Out of PS.Case No. -616 Year- 2012 Thana -PATNA COMPLAINT CASE District-PATNA

S. K. Shukla @ Sudhir Kumar Shukla @ Sudhir Kant Shukla Son of Bisheshwar Shukla, resident of Shukla Tola, P.S.-Chanpatiya, District-West Champaran, Prop of M/s Jagdamba Medicine Centre Durga Mandir Road Chanpatiya, District-West Champaran.

.... Petitioner

Versus

1. The State of Bihar
2. Baliram Tiwari Son of Ram Bhajan Tiwari, Proprietor of Global Enterprises Resident of-Vishnupuri, Chitkohara, P.S.-Gardanibagh, Patna-2, District-Patna.

.... Opposite Parties.

Appearance :

For the Petitioner/s	:	Mr. Bimlesh Kumar Pandit, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Opposite Party No.2		Mr. Lakshmendra Kumar Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-09-2017

In the present application filed under Section 482 of the Code of Criminal Procedure, the petitioner has prayed for quashing of the order dated 09.01.2013 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 616 C of 2012 by which finding a *prima facie* case to be made out under Section 406 of the Indian Penal Code (for short 'IPC'), the petitioner has been summoned to face trial.

2. The case of the complainant/opposite party no. 2, in

brief, is that he is proprietor of M/s Global Enterprises and is engaged in wholesale business of medicine. The petitioner S. K. Shukla @ Sudhir Kumar Shukla is in retail business of medicine. He used to purchase medicine from the wholesale shop of the complainant on payment of cash or by cheque. On 08.07.2011, he took medicine worth Rs.38,000/- and handed over a cheque amounting to Rs.38,000/- drawn on Central Bank of India, Chanpatiya to the complainant. When the said cheque was dishonoured due to insufficiency of fund, he was informed about the dishonour of cheque and a demand of Rs.38,000/- was made from him. However, he sought for a month's time in order to pay the amount. Despite lapse of the period of one month, he failed to make payment of the due amount. Thereafter, the complainant sent a legal notice to him on 05.09.2011. On receipt of the legal notice, the petitioner requested the complainant to give five months more time, as his financial condition was not good. Upon the words of the petitioner, the complainant did not take any action for five months. On expiry of the period, when the complainant contacted the petitioner, he stated that he would pay the due amount after arranging the same. On the basis of these allegations, the complainant has alleged in the complaint that the petitioner cheated him and had misappropriated Rs.38,000/-.

3. The complainant was examined on solemn affirmation in which he has admitted that the petitioner was having long standing business relationship with him. The witnesses examined on behalf of the complainant have also stated that the petitioner had business relation with the complainant and after taking medicine worth of Rs.38,000/-, he failed to make payment for the same after the cheque handed over by him was dishonoured.

4. Mr. Bimlesh Kumar Pandey, learned counsel appearing for the petitioner has submitted that summoning order after taking cognizance of the offence under Section 406 of the IPC is bad in law, as the ingredients of the offence punishable under Section 406 of the IPC, are not attracted to the facts of the present case. He has submitted that the complainant himself has admitted that he was having long standing business relationship with the petitioner and, merely because the petitioner failed to pay the amount after taking medicine worth Rs.38,000/- in due time, the same would not constitute an offence of criminal breach of trust.

5. On the other hand, learned counsel appearing for the complainant has submitted that there is no illegality in the impugned order whereby the petitioner has been summoned to face trial. He has submitted that the petitioner had issued a cheque at the time of taking medicine of Rs.38,000, which was dishonoured on the presentation,

and on demand, he mischievously sought five months' time for payment of amount. He has submitted that the complainant relied upon his word and, in the meantime, the validity of the period of cheque lapsed. He has submitted that the alleged act of the petitioner would certainly attract the ingredients of the offence punishable under Section 406 of the IPC.

6. I have heard learned counsel for the parties and perused the record.

7. Section 406 of the IPC is the penal provision for offence of criminal breach of trust, which has been defined under Section 405 of the IPC. The same reads as under :-

> "**405. Criminal breach of trust** —
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> Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits

"criminal breach of trust"."

8. In order to constitute an offence of criminal breach of trust, there must be entrustment of property. Here, in the present case, there is no entrustment of property.

9. The fact of the case is that in a business transaction the complainant sold medicine and the petitioner got the same for which payment was made by cheque and such cheque was dishonoured. However, the complainant did not comply with necessary requirements of Section 138 of the Negotiable Instruments Act, 1881 and allowed the cheque to be lapsed.

10. As the title of the property, i.e. medicine in the present case had passed on the petitioner, no question of entrustment or misappropriation would arise attracting Section 406 of the IPC.

11. Further, one of the essential ingredients for constituting the offence under Section 406 of the IPC is that the person entrusted should have dishonestly misappropriated the property or converted the same to his own use or dishonestly used or disposed of that property, thereby willfully causing suffering to other persons in violation of terms of agreement. This ingredient is also absent in the present case, as there is nothing to say that there was any dishonest misappropriation of property rather the case of the complainant is that he had a long standing business relation with the petitioner and

in course of business transaction one of the cheques issued by him got dishonoured. Such dishonour of cheque would not cover the ingredients of dishonestly as defined under Section 24 of the IPC.

12. In that view of the matter, impugned order dated 09.01.2013 passed by the learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 616 C of 2012, is set aside.

13. The application stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2017
Transmission Date	19.09.2017