IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26302 of 2014

Arising Out of PS. Case No.-3063 Year-2013 Thana- VAISALI COMPLAINT CASE District- Vaishali

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Chandra Bhushan Prasad Srivastava, son of Rajeshwar Prasad Srivastava, Resident of village- Sondho Mobarakpur, P.S.- Garoul, District- Vaishali, at present resident of Delhi Public School, Dighi Kala East, P.S.- Sadar, District- Vaishali

... ... Petitioner/s

Versus

1. The State of Bihar
2. Alakh Niranjan Prasad, Resident of village + Post Office- Dighi Kala East, P.S.- Sadar, District- Vaishali

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shailendra kumar Singh
For the Opposite Party no. 2:		Dr. Alok Kumar Alok, Adv
For the State	:	Mr. NARSING TANTI (APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 25-08-2017

Heard learned counsel for the parties.

The present quashing application under Section 482 of the Cr.P.C has been filed for quashing the order dated 01.10.2013 passed by the learned Chief Judicial Magistrate, Vaishali at Hajipur in Complaint Case No. 3063 of 2013 (Tr. No. 354 of 2014) taking cognizance of the offence under Section 406 of the Indian Penal Code and Section 138 of N.I. Act.

Briefly stated, the facts of the case is that a complaint petition was filed by Alakh Niranjan Prasad (Opposite Party No. 2) in the court below which gave rise to complaint case No. 3063 of 2013 stating therein that accused-petitioner-Chandra Bhushan Prasad established a Delhi Public School at Dighi Kala in the year 2006. There was financial problem in the establishment of the School and for that reason he has taken Rs. 20 Lacs from the complainant in various installments for running the School and making him partner in the School. In the meantime, the School became popular and large number of admissions were being made in the School and the School became very profitable. It has been further alleged in the complaint petition that since inception the accused-petitioner had the intention of cheating the complainant and as such showed less income and less profit of the School, so that the share of the complainant could not be paid to him and nothing was paid to the complainant.

Seeing the attitude of the accused-petitioner, the complainant demanded refund of his money and the accused agreed to pay the loan amount. On 25.04.2013, the accused-petitioner had given two cheques of Rs. 10 Lacs each bearing no. 449490 and 449491 on his Account No. 30271103951 and the complainant was asked to deposit the said cheque in the bank. On the instruction of the accused-petitioner, the complainant deposited the aforesaid cheques on 13.08.2013 and

20.08.2013, for payment but the said cheques were not honoured and returned due to insufficient funds in the account of the accused-petitioner. On 26.08.2013, the complainant gave legal notice to the accused-petitioner and in spite of that the amount was not paid to the complainant and as such the present complaint petition was filed.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case and the complainant was never his partner and there was never any promise of giving 25 per cent profit from the School. It has been further stated by the learned counsel for the petitioner that the loan of Rs. 1 Lacs was taken by the petitioner from the complainant for his School development and the said amount was repaid to the complainant by different cheques and all the cheques issued by the petitioner which were presented before the concerned Bank were encashed by the petitioner. It has been further contended on behalf of the petitioner that he had given two cheques bearing no. 449490 and 449491 with his signature only without entering any amount in the year 2011, which was fraudulently used by the complainant in the year 2013 entering the amount of Rs. 10 Lacs without any information or consent of the petitioner.

The complainant was examined on S.A. in the Court below and in support of his complaint, two witnesses were also examined. After examining the statement of the complainant, his two witnesses and the materials available on record, the court below found prima facie case against the accused-petitioner for the offfence punishable under Section 406 of the Indian Penal Code and Section 138 of the N.I. Act.

It is admitted fact that the said cheques were issued in favour of complainant by the Opposite Party No. 2 which was not honoured by the Bank and there was no sufficient amount in the said account and as such the offence under Section 406 of the Indian Penal Code and Section 138 of the N.I. Act is made out. The procedure as contemplated under the Negotiable Instruments Act of giving notice within fifteen days from the date of dishonour notice of the bank was given by the complainant to the petitioner but even thereafter money was not paid by the accused-petitioner to the complainant, the present petition has been filed by the complainant and on the basis of materials available on record, the court below took cognizance of the offence under Section 406 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act.

At the time of taking cognizance, the court below has to see that any offence is made out against the accused or not and the court below after having found sufficient materials available on record took cognizance and passed the impugned order.

After hearing the parties and going through the order passed by the learned court below, I do not find any error, illegality or infirmity in the same requiring any interference by this Court, at this stage.

Petitioner may take all grounds raised in this petition as well as all other grounds permissible in law at the time of framing of charge.

The petition stands dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
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