

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38304 of 2010

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1. Rakhal Chandra Rudra Paul S/O Late Yogendra Chandra Paul
 2. Dababrata Paul S/O Rakhal Chandra Rudra Paul, R/O Street No. 14/A, Quarter No. 1/A, Post- Chitranjan, P.S. Chitranjan Town, District- Bardhwan (West Bengal).

.... Petitioners

Versus

1. The State of Bihar
2. Shakuntala Sahay W/O Late Janak Kishor Sahay, residing at Sahay Sadan "B" Area, Mithapur, P.S. Jakkanpur, District- Patna.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Anil Kumar Mishra, Advocate.

For the Opposite Parties : Mr. Kumar Ranjit Ranjan (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

6 06-04-2017

The petitioners have filed this Criminal Miscellaneous for quashing the order dated 16.10.2008 passed by Sri R.K. Tripathi, the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 1729 (C) of 2008, whereby and whereunder, after finding prima-facie case, cognizance was taken under sections 406 and 420 of the I.P.C and also under section 138 of the N.I. Act.

Submission on behalf of the petitioners is that the petitioners are in no way connected in the case. It was Subhbrata Paul who has taken personal loan from the complainant amounting to Rs. 1,00,000/- and further he has given cheque which has been dishonored and as such the petitioners having no concern ought



not to have been summoned to face the trial. No case is made out against these petitioners.

On the other hand, the learned counsel for the opposite party no.2 submits that it was petitioner no.2 who has signed the agreement as a witness and further in presence of petitioner no.1 and petitioner no.2 the said amount was given to Subhbrata Paul. The petitioners being in collusion and conspiracy had cheated the complainant. The learned Magistrate after finding prima-facie case to be made out against the petitioners, has summoned them and there is no illegality, incorrectness or impropriety in the impugned order. The petitioner no.1 is none else but the father of Subhbrata Paul and the petitioner no.2 is the brother. It was petitioner no.2 who has close friendship with the son of the complainant and due to that Subhbrata Paul also developed intimacy with the complainant. Both used to say the complainant as mother. It is also submitted that the petitioners and Subhbrata Paul have further cheated the complainant by taking Rs. 4,00,000/- and for that another case is pending.

Having considered the submissions urged at the bar, going through the record, complaint petition, statement of the complainant on S.A. and the statements of the complainant's witnesses examined during the enquiry, it reveals that the learned



Magistrate after considering all these things has passed the impugned order correctly and properly. There being no illegality, incorrectness or impropriety, the impugned order does not require any interference by this Court. At this stage, the court is required only to see as to whether on the basis of the materials collected during enquiry prima-facie case is made out or not. Defence of the accused persons cannot be looked into rather it can be adjudged at the appropriate stage.

In the result, finding no merit in this Criminal Miscellaneous, the same is hereby dismissed.

(Jitendra Mohan Sharma, J)

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