IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3561 of 2012

Arising Out of PS.Case No. -1379 Year- 2006 District- GOPALGANJ

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1. Rajesh Singh S/O Baleshwar Singh R/O Quarter No. 70, Dunlop Estate, P.O- Shaganj, P.S- Chuchura, District- Hugali, (West Bengal)

.... Petitioner/s

Versus

1. The State Of Bihar
2. Bachcha Rai S/O Kanchan Rai R/O Vill- Manpur, P.S- Gopalganj, District- Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar
Mr. Satyeshwar Prasad
For the Opposite Party No. 2 : Mr. Umesh Kumar Singh
For the State : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-08-2017

The present application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 24.09.2007 passed by the learned Judicial Magistrate, 1st Class, Gopalganj in Complaint Case No. 1379 (c) of 2006 whereunder the learned Magistrate finding prima facie case for the offence under Section 420 of the Indian Penal Code ordered for issuance of summons against the petitioner.

2. Heard both sides and perused the record.

3. The facts in brief is that the complainant filed a complaint case No. 1379 (c) of 2006 on the file of C.J.M.,

Gopalganj alleging inter alia that all the accused persons cited in the complaint petition persuaded the complainant to become distributor in the company of co-accused K. Chandrashekhar, who was the chairman-cum-Managing Director of A.R.C. Biological Ltd., Hyderabad. The complainant believing on the version of the petitioner and other co-accused gave an amount of Rs. 4,50,000/-. The accused persons did not supply the goods as per their agreement and on demand, the accused No. 4 handed over a cheque for an amount of Rs. 4,00,000/- in order to return his money. The said cheque was presented in Bank, which bounced on account of insufficient fund. The accused persons refused to pay the money in consequence of which, the present complaint case has been filed.

4. It has been submitted that the cheque was issued by other co-accused and on account of bouncing of cheque, this petitioner cannot be held liable for the offence of cheating and breach of trust. The complainant has filed another Complaint Case No. 1415 C of 2006 with similar allegation in which cognizance has been taken against this petitioner also. The petitioner cannot be put on trial in two cases for the same offence. The learned Magistrate has passed the order in mechanical manner and so, the same is fit to be quashed.

5. The learned counsel for the Opposite Party No. 2 and

the learned A.P.P. for the State opposed the submissions.

6. On perusal of record, I find that there is a specific allegation that this petitioner and other co-accused misled the complainant and in conspiracy, they took an amount of Rs. 4,50,000/- in connection with business. The complainant on S.A. and other witnesses, at the time of enquiry, have stated that it was the petitioner, who called other co-accused at the place of the complainant and persuaded him to give the said amount for development of business. The learned Magistrate after assessing the material on record found prima facie case for the offence under Section 420 of the Indian Penal Code and accordingly, took cognizance. I do not find any illegality in the impugned order. The petitioner will have opportunity to raise his defence at the time of trial. So far trial of this petitioner in Complaint Case No. 1415 (c) of 2006 is concern, the same shall be amalgamated if the court below finds that the facts of said case is similar and one.

7. In the above facts and circumstances, I do not find any merit in the application. This application is, accordingly, dismissed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.08.2017
Transmission Date	03.08.2017