

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18676 of 2014

Arising out of P.S. Case No.2851 Year 2011 Thana GOPALGANJ COMPLAINT CASE District
GOPALGANJ

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Dr. Nagendra Rai Son of Late Gauri Shankar Rai R/o Village-Purkhas, P.S.
Gopalpur, District-Gopalganj, present resident of 41, Dobson Road, Howrah, P.S.
Golabari, District-Howrah (W.B.)

.... Petitioner

Versus

1. The State of Bihar
2. Sri Birendra Rai Son of Late Gauri Shankar Rai R/o Village-Purkhas, P.S.
Gopalpur, District-Gopalganj

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Akhilesh Kumar, Advocate
For the State	:	Mr. Satyavrat Verma, Advocate
For O.P. No.2	:	Mr. Sanjay Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 04-10-2017

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of opposite party no.2.

2. The petitioner seeks quashing of order dated
22.05.2012, passed in Complaint Case No.2851 of 2011 (Trial
No.3335 of 2012) by learned Judicial Magistrate, 1st Class, Gopalganj
whereby the learned Judicial Magistrate, 1st Class, Gopalganj has
taken cognizance of the offences under Section 465 of the Indian
Penal Code.

3. The facts, as stated in the complaint petition, is that the
complainant alleged that due to some partition dispute, the accused
was antagonistic to him and also threatened to face the dire
consequences. The complainant received the legal notice from his



brother, the accused, asking to pay Rs.15,00,000/- and cheque issued by him got bounced. The complainant had not issued any cheque to his brother rather the cheque-book was stolen by him and after making a false signature of the complainant, the same was presented in the bank.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner is own brother of the complainant, a qualified professional doctor practicing in Kolkata, and invariably used to financially help his brother, who is a farmer living in the native village, so two cheques were issued by him as a security in lieu of financial help given by the petitioner, when the money was not returned, he presented the cheque, which got bounced. Thereafter he filed Complaint Case No.8 of 2012 in the competent court of Kolkata. The matter is sub-judice there, both sides have appeared and the trial is proceeding in the matter, therefore, there is no any *prima facie* case of brining into existence a forged cheque is made out against the petitioner. Contrary to that the learned counsel appearing on behalf of the complainant submits that the allegation, as levelled in the complaint, *prima facie* discloses an offence under Section 465 of the Indian Penal Code. The complainant earlier had also lodged a *sanha* entry at the police station regarding loss of his cheque-book, the same was misused by his own brother by putting a forged signature and on



that basis he lodged a false case against him.

5. The Court, having considered the rival submissions and on perusal of the records, finds that the present complaint was filed subsequent to lodging of Complaint Case No.8 of 2012 filed by the petitioner against his brother-complainant for offence under Section 138 of the N.I. Act, already the matter is sub-judice before a competent court and the matter can only be resolved after completion of the trial in the matter whether the cheque bears the signature of the complainant or it is a forged one, so the Court is of the view that continuation of the criminal proceeding in the present cases at this juncture would be abuse of the process of the Court, so the entire criminal proceeding of Complaint Case No.2851 of 2011 (Trial No.3335 of 2012) inclusive of cognizance order dated 22.05.2012, passed by learned Judicial Magistrate, 1st Class, Gopalganj is hereby set aside

6. The quashing application stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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