

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20807 of 2013

Arising Out of Complaint Case No. -3128 (C)Year- 2011 Thana –Buddha Colony District- PATNA

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Nirmal Kumar Srivastava S/o Late Sidhnath Lal R/o Flat Nos. 202 & 203, Lalita Kunj Apartment, B. Area, Mithapur, P.O.- G.P.O., P.S.- Jakkanpur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Chandradeo Sharma S/o Late Bhopal Sinha R/o C/o Madhuri Niketan, East of old Dujra Bhathi, East Buddha Colony, P.S.- Buddha Colony, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Y.C. Verma. Sr. Adv.
For the O.P. No. 2 : M/s Sanjiv Sharan and Sanjay Kr. Mishra, Advs.
For the State : Mr. Shantanu Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 09-10-2017

1. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 2nd July 2012 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 3128(C)/2011 whereby and whereunder the learned Magistrate finding *prima facie* case for the offence under section 418 of the Indian Penal Code and section 138 of the Negotiable Instruments Act, summoned the petitioner on filing requisites by the opposite party no. 2.

2. Heard learned counsel for the petitioner, learned counsel for the opposite party no. 2 and learned Additional Public Prosecutor for the State and perused the record.



3. The facts, in brief, is that the opposite party no. 2 filed a complaint case on the file of learned Chief Judicial Magistrate alleging *inter alia* that the petitioner took an amount of Rs.4,00,000/- (four lacs) as friendly loan from the complainant (O.P.No.2) in the month of January, 2011 on a condition of returning the loan amount within six months. The complainant after passing over of six months, requested the petitioner to make payment whereupon he issued Cheque no. 719524 dated 27.07.2011, which was presented in Bank, but it was dishonoured on account of insufficient fund. The complainant gave legal notice and thereafter, lodged the case. It has been submitted that this petitioner had taken loan from several persons and issued cheques in their favour for returning the said amount. All the cheques issued by the petitioner were dishonoured for which the persons filed series of complaint cases before the Chief Judicial Magistrate Patna. The learned counsel for the opposite party no. 2 produced web-copy of order passed in Criminal Miscellaneous Nos. 52650 of 2013, 31580 of 2013, 19624 of 2014, 10776 of 2014 and 15355 of 2014 to show that all the said criminal miscellaneous applications filed to quash the cognizance order, have been dismissed. The above orders show that the petitioner mala fide took handsome amount from different persons and issued several cheques which were dishonoured on account of insufficient fund. The Court below finding



prima facie case of cheating and finding element of section 418 of the Code of Criminal Procedure and section 138 of the Negotiable Instruments Act, has rightly taken cognizance against this petitioner.

4. In this view of the matter, I do not find any merit in this criminal miscellaneous application. Accordingly, this application is dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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