

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28941 of 2013

Arising Out of PS.Case No. -1070 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Dhuruv Prasad S/O Late Krishna Murari Resident Of Ramna Road, P.S.- Civil Lines, District & Town- Gaya
 2. Krishna Prasad S/O Late Krishna Murari Resident Of Ramna Road, P.S.- Civil Lines, District & Town- Gaya
 3. Ajay Prasad S/O Late Krishna Murari Resident Of Ramna Road, P.S.- Civil Lines, District & Town- Gaya

.... Petitioner/s

Versus

1. The State Of Bihar
2. Dinesh Kumar S/O Late Munna Lal Resident Of Kali Ashthan, P.S.- Chowk, Patna City, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar Singh

For the Opposite Party/s : Mr. Narsinh Tanti, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-09-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 02.02.2013 passed by the learned Judicial Magistrate, Patna City in Complaint Case No. 1070 of 2012 whereunder the learned Magistrate finding prima facie case for the offence under Section 420 of the Indian Penal Code, summoned the petitioners.

2. Heard both sides.

3. The Opposite Party No. 2 filed a complaint case on the file of the learned C.J.M. alleging inter alia that in course of business



transaction, an amount of Rs. 1,42,664/- fell due against the petitioners and their firm, which was dealing in sale and purchase of Ply and Glass. On repeated requests of the complainant, these petitioners visited at his place and made payment of Rs. 8,000/- and promised to pay the balance amount at the earliest. A legal notice was also given to the petitioners on 04.10.2012, which was not properly replied. It has been further alleged that on 29.10.2012, all the accused persons came to his business premises and threatened him. The accused persons have thus cheated the complainant and committed breach of trust by retaining the dues amount. After enquiry, the learned court below took cognizance of offence as stated above.

4. The learned counsel for the petitioners submits that there is no reliable paper to support any business transaction between the parties. These petitioners had neither such business nor they ever visited at the place of the complainant either to make payment of Rs. 8,000/- or to hurl threat of dire consequences. The learned Magistrate without applying judicial mind has taken cognizance, which is not sustainable in the eyes of law.

5. The learned APP for the State opposed the submission.

6. On perusal of Lower Court Records (LCR), I find that the Opposite Party No. 2 has filed the complaint case with vague allegation. It has been alleged that they were on business transaction



since the year 2006 and after accounting an amount of Rs. 1,42,664/- fell due against them and thereafter, the accused persons left making payment and closed their business. The Opposite Party No. 2 has not given any date of settlement of their account. There is absolutely no reliable paper on L.C.R. to show that these petitioners were running business of Ply and Glass in the name of their firm, namely, Narayani Ply and Glass. The complainant has alleged that on 11.04.2011, the accused No. 1 came at his factory and paid an amount of Rs. 8,000/-. The accused No. 1 is M/s Narayani Ply and Glass Proprietor. Thus, it is not clear as to which of the three petitioners visited at his place and paid Rs. 8,000/-. The dispute between the parties appears to be a civil dispute in connection with business transaction between the two firms and if the complainant succeeds in establishing such transaction by cogent evidence, only they would be entitled to such amount. There is absolutely no reliable paper on record to show the business transaction. There are contradictions also in the statement of the witnesses recorded during enquiry. The evidence of enquiry witnesses does not find support from any document. In such circumstance, the prosecution of the petitioners would be an abuse of process of Court. The Opposite Party No. 2 in spite of his appearance did not appear to oppose the submission.

7. In view of the facts stated above, the order dated



02.02.2013 passed by the learned Judicial Magistrate, Patna City in Complaint Case No. 1070 of 2012 and the criminal prosecution of the petitioners is quashed.

8. This application is allowed.
9. Let a copy of this order along with lower court records be sent to the court below.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2017
Transmission Date	15.09.2017

