IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17107 of 2012

Arising Out of Complaint Case No. -2234C Year- 2010 Thana - District- PATNA

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Shanu@Sannu@Soni W/O Md. Arshad Jamal R/O Vill-Miraisyan Tola, Chunauti Kuan, P.S.-Phulwari Sharif, Distt-Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Md. Imroz Hussain S/O Md. Athar Hussain Chunauti Kuan, P.S.-Phulwari Sahrif, Distt-Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeet Deo Kumar, Adv.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 28-11-2017

Heard learned counsel for the petitioner and counsel for the Opposite Party no. 2.

The petitioner has challenged the impugned order dated 06.10.2010 passed by the learned Judicial Magistrate Ist Class, Patna who after holding enquiry found prima facie case against this petitioner and other accused persons for the offence under Section 138 of the Negotiable Instruments Act.

Counsel for the petitioner submits that there is specific averment in the complaint petition in para 5 that the cheque was issued by petitioner no. 1 who is the husband of this petitioner which got bounced. Learned Magistrate found prima facie case only for the offence under Section 138 of the Negotiable Instruments Act. There is no averment in his complaint that cheque was issued from the joint account of this petitioner and her husband.

Counsel for Opposite Party no. 2 has submitted that whether the account was joint or single can be tested only at the time of trial and also submits that whoever issued the cheque and the same got bounced will be liable for the offence under Section 138 of the Negotiable Instruments Act.

Complainant has alleged in the complaint petition that petitioner and accused no. 1 who are wife and husband were known to him and also related with the complainant. The petitioner came and made request for an amount of Rs. 1,18,500/- showing some problem and on such request, the complainant managed the aforesaid amount from his father and on 24.03.2010 gave Rs. 1,18,500/- to the accused persons.

The complainant has made averment in para 5 of complaint that the accused persons at the time of receiving the amount assured the complainant that the aforesaid amount will be returned after two months and in support of the aforesaid assurance accused no. 1 husband of this petitioner issued cheque bearing no. 156686 dated 24.03.2010 drawn on Bihar State Cooperative Bank Ltd. Bankipur branch Patna. The complainant presented the aforesaid cheque in the bank on 12.07.2010, but the said cheque was not honoured and returned with memo with endorsement dated 16.07.2010 “Referred to drawer/fund insufficient.” The complainant received the memo on 20.07.2010 and thereafter the complainant met personally to inform about the dishonour of the cheque. The complainant and his father also made request for payment of cheque amount, but the accused persons avoided. Thereafter, legal notice was served on 26.07.2010 and lastly the instant case has been filed.

From the entire averments in the complaint petition, as mentioned in detail, this court finds that at no place in the entire complaint petition any specific allegation of overt act has been levelled against this petitioner.

The argument made on behalf of Opposite Party no. 2 that cheque was issued from the joint account of this petitioner and her husband can be tested at the stage of trial does not impress this Court because in the complaint petition itself in para 5 there is specific averment that cheque was issued by the husband of this petitioner. The person who has issued the cheque is liable for criminal action under Negotiable Instruments Act.

There is clear averment in para 5 that the cheque has been issued by accused no. 1, who is husband of this petitioner. Therefore, the impugned order passed by the court below finding prima facie case against this petitioner under Section 138 of the Negotiable Instruments Act, is not in accordance with law. Accordingly, the impugned order dated 06.10.2010 along with entire criminal proceeding against the petitioner is hereby quashed.

Accordingly, this Criminal Miscellaneous petition is allowed.

(Sanjay Priya, J)

Vinita/-

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CAV DATE	NA
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