

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48703 of 2013

Arising Out of PS.Case No. -775 Year- 0 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

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Sheshnath Chaurasia Son Of Jagan Ram Chaurasia, R/o Mohalla-
Kabirganj, Dharamsala Road, Sasaram, P.S.- Sasaram Town, District-
Rohtas At Sasaram

.... Petitioner

Versus

1. The State Of Bihar
2. Yogendra Prasad Singh, Son Of Late Sumeshwar Singh R/o Village-
Sikariah, P.S.- Doeiganj, District- Rohtas, At Present Sonu Tyre, G.T.
Road (Near Mufassil Thana), P.S.- Sasaram (Town), District- Rohtas at
Sasaram

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Dharmendra Kumar Singh, Advocate
For the Opposite Parties : Mr. Anusaiya Jaiswal(APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

5 11-05-2017 This criminal miscellaneous has been filed for quashing the order dated 02.09.2013 passed by Sri Satya Prakash Mourya, the then learned Judicial Magistrate, 1st Class-cum-Additional Munsif -V, Sasaram , Rohtas in Complaint Case No. 775 of 2012, whereby and whereunder after finding prima facie case to be made out under Section 420 of the Indian Penal code summon was ordered to be issued against the petitioner.

Heard the learned counsel for the petitioner and the learned A.P.P for the State. No body is present on behalf of opposite party no.2.

The opposite party no.2 filed the aforesaid complaint



case on 10.07.2012 stating therein that the petitioner was running a committee and the opposite party no.2 also became one of the members of the aforesaid committee and deposited cash of Rs. 4,50,000/- but no amount was returned to opposite party no.2. There were altogether twenty members in the aforesaid committee and the money was kept in custody of the petitioner and the petitioner disclosed that they were unable to pay the aforesaid amount to opposite party no.2 and when the complainant went to police station for lodging the case, the police refused to lodge the same, therefore, the complaint was filed. The complainant was examined on solemn affirmation. Two inquiry witnesses namely Dhanji Singh and Rajesh Prasad Singh were examined and after considering the materials collected during inquiry the learned Magistrate passed the impugned order.

Learned counsel for the petitioner submits that there is no chit of paper to show that the petitioner had received any amount from opposite party no.2. There were several members in the committee but only the petitioner has been implicated in this case. As per complaint petition itself, the opposite party no.2 after being satisfied with the papers has invested the amount and as there was loss in the business so the amount was not returned. No offence under Section 420 of the Indian Penal Code is made out



and it is a case of civil dispute. The money can be realized by filing money suit and not by filing complaint case.

The learned A.P.P. on the other hand, submits that the defence of the accused cannot be considered at the time of taking cognizance. The points raised by the learned counsel for the petitioner can well be adjudged at the appropriate stage i.e. at the time of hearing on the point of charge and not at this stage. The petitioner has cheated the opposite party no.2 and as such the learned Magistrate after finding prima facie case to be made out has passed the impugned order.

Having considered the submissions urged at the Bar, going through the complaint petition and the impugned order, it is manifest that the learned Magistrate after considering the complaint petition, the statements of the complainant on solemn affirmation and the statement of two inquiry witnesses has passed the impugned order. At this stage, the court is only required to see as to whether prima facie case is made out or not on the basis of materials collected during inquiry. The defence of the accused cannot be considered at this stage. Meticulous scrutiny of the evidence is also not required at this stage. The learned Magistrate has rightly passed the impugned order and there is no illegality, incorrectness and impropriety in the said order. Accordingly, the



order dated 02.09.2013 is hereby confirmed, and finding no merit in this criminal miscellaneous, the same is hereby dismissed.

The petitioner will be at liberty to raise his defence at the time of hearing on the point of charge in accordance with law.

(Jitendra Mohan Sharma, J.)

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