

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31300 of 2014

Arising Out of PS.Case No. -274 Year- 2010 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

=====

Diwakar Prasad Sinha, Son of Late Bacchi Prasad Sinha, Resident of
Village Saidpur, P.S. Gopalpur, District Bhagalpur, current Advocate, Civil
Court, Naugachia, District Bhagalpur

.... Petitioner

Versus

1. The State of Bihar
2. Bibhash Prasad Singh, Son of Late Jwala Prasad Singh, Resident of
Village Latti Pakar, P.S. Gopalpur, District Bhagalpur, Currently
Advocate, Civil Court Naugachia, District Bhagalpur

.... Opposite Parties

=====

Appearance :

For the Petitioner : Mr. Sunil Kumar Singh, Advocate
For the State : Mr. Pradip Nr. Kumar, APP
For O.P. No.2 : Mr. Brajesh Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER

3 17-08-2017

Heard learned counsel for the parties.

The petitioner has filed this quashing application for
setting aside the order of cognizance dated 17.06.2014, passed by
learned Judicial Magistrate, 1st Class, Naugachia in Complaint
Case No.274 of 2010 whereby the learned Magistrate has taken
cognizance of the offence under Section 406 of the Indian Penal
Code.

The brief fact, as stated in the complaint petition, is
that the petitioner, who was suffering from heart ailment for
treatment purpose took loan of Rs.2,00,000/- from the complainant
with a promise to return it back. The loan amount was given in



two installments and there is acknowledgment receipt of Rs.90,000/- by petitioner's Clerk. The petitioner is a practicing advocate in Naugachia Civil Court and the loan amount was not returned back to the complainant.

Learned counsel for the petitioner submits that it is a malicious prosecution launched by the complainant. The complainant had land dispute with one Maheshwar Choudhary and the daughter-in-law of Maheshwar Choudhary filed a complaint case against the present complainant and others on 06.04.2010 and in that case the petitioner was conducting lawyer of the complainant, i.e., the daughter-in-law of Maheshwar Choudhary. In Complaint Case No.267 of 2010, which was later on sent to the police for registration of the FIR and due to that reason he has falsely been implicated by filing this complaint case on the very next day, i.e., 07.04.2010. It is also submitted by learned counsel for the petitioner that there is no any document produced by the complainant during the enquiry showing receipt of any loan amount by the petitioner. The allegation that his Clerk received the acknowledgment of taking Rs.90,000/- is false allegation. In any way this petitioner has not made any acknowledgment of receipt of any loan amount. Even no civil proceeding has been initiated by filing money suit for realization of the loan amount. The court has



taken cognizance under Section 406 of the Indian Penal Code but no ingredient of Section 406 of the Indian Penal Code is made out and it is a non-speaking order whereas learned counsel for the complainant submits that he has given Rs.2,00,000/- to the petitioner for his treatment but there is no document except acknowledgment of Rs.90,000/- received by the Clerk of the petitioner and there is no denial in the petition that he has not taken the loan.

Having considered rival submissions and on perusal of the records, this Court is of the view that there is no any document to show that the complainant had advanced loan of Rs.2,00,000/- to the petitioner. Except the oral statement there is no other material. As far as acknowledgment of Rs.90,000/- is concerned, that is not of the petitioner rather as per allegation it is of the Advocates' Clerk. There is no case of any entrustment of property or money is made out. In case of taking loan with a promise to repay if the same is not repaid then offence of cheating is drawn not of criminal breach of trust but as already earlier observed, there is no *prima facie* evidence to show that Rs.2,00,000/- was advanced by the complainant to the petitioner. The petitioner has also brought on record that he appeared on behalf of Archana Devi, the informant of Gopalpur P.S. Case



No.103 of 2010, arising out of Complaint Case No.267 of 2010 in which the present complainant is also one of the accused. It is also apparent that the said complaint case was filed on 06.04.2010 and on the next day the present complaint has been filed so the present prosecution launched by way of filing complaint appears malicious in nature and *prima facie* there is no material to make out a *prima facie* case of breach of trust as well as of cheating so the continuation of the criminal proceeding in the present case would be abuse of the process of the court so the entire criminal proceeding including the order of cognizance dated 17.06.2014, passed in Complaint Case No.274 of 2010, pending in the court of learned Judicial Magistrate, 1st Class, Naugachia is hereby quashed.

The application stands allowed.

(Arun Kumar, J.)

S.Kumar/-

U		T	
---	--	---	--

