

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13963 of 2014

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Alok Prakash Gupta, Proprietor M/S Alok Prakash Gupta Son Of Late Jamuna Prasad Gupta At B-3, Near Mohini, Boaring Canal Road, S.K. Puri, P.S- S.K.Puri, District- Patna.

.... Petitioner

Versus

1. The State of Bihar
2. Sri Durga Nand Choudhary, Director Kali Flour Mills (Pvt) Ltd., Tatma Toli, Purnia Resident of Leh Villa, South Bhatta, P.S- K. Hatt, District- Purnia

.... Opposite Parties

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Appearance :
For the Petitioner : Mr. Nawal Kishore Agrawal, Sr.Advocae
For the Opposite Party No.2 : Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 02-08-2017

This application under section 482 of the Cr.P.C. has been filed to quash the order dated 26.11.2012 passed by learned CJM, Purnia in K.Hatt (Maranga) P.S.Case No.287 of 2011 whereunder the learned CJM finding prima-facie case for the offence under Sections 406 and 420 of the IPC, summoned the petitioner.

2. Heard and perused the record.

3. The facts in brief is that the Opposite Party No.2 filed a complaint case no.1263 of 2011 alleging inter-alia that in course of business transaction, the petitioner had taken product items from the complainant who runs a flour mill. It has been alleged that a total sum of Rs.14,48,748/- fell due against the petitioner. In spite of repeated



demand he did not pay the said amount and on persuasion this petitioner executed an agreement agreeing to pay an amount of Rs.3,63,941/- as outstanding dues. The complainant gave legal notice on 11.05.2011 whereafter lodged the case against the petitioner for committing breach of trust and cheating the complainant.

4. It has been submitted that the dispute between the parties cropped up in connection with business transaction. There is no ingredient constituting an offence under Sections 420 or 406 of the IPC. There is nothing on record to show that there was any dishonest intention on the part of the petitioner and the learned Magistrate has passed the impugned order in mechanical manner and so the impugned order is fit to be quashed.

5. The learned Opposite Party No.2 opposed the submissions.

6. On perusal of complaint petition as well as materials available on record, I find that the Opposite Party No.2 had given flour items on different occasion and in spite of repeated demand and request and also on giving legal notice, he did not pay the said amount although an agreement acknowledging the said money was executed by him in favour of Opposite Party No.2. I further find that the copy of complaint petition was sent to police station under Section 156(3) of the Cr.P.C. on the basis of which K.Hat P.S.Case No.287 of 2011



was registered. The matter was investigated and police submitted chargesheet against the petitioner. In ruling reported in Vege Holdings Pvt. Limited v. State of Kerala reported in 2014(3) PLJR SC page 22 our Apex Court has observed that in a given set of fact may make out a civil wrongly as also a criminal offence and only because a civil remedy is for the complainant/informant, that duties cannot be a ground to quash the criminal proceeding.

7. In view of the above facts, I do not find any merit in the application. Accordingly, this application is dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.08.2017
Transmission Date	13.08.2017

