

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.15347 of 2014

Arising Out of PS. Case No.-31 Year-2009 Thana- SAHKUND District- Bhagalpur

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Kayum Ansari Son Of Sajjad Ansari, Resident Of Dilgaury, P.S. Sultanganj,
District- Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Murshid Ansari Son Of Late Md. Basul Ansari Resident Of Village- Radha
Nagar, P.S.- Sahkund, Distt- Bhagalpur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Swapnil Kumar Singh

For the Opposite Party/s : Mr. RAM SUMIRAN ROY (APP)

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date : 28-11-2017

Heard learned counsels for the petitioner and the
opposite parties.

Petitioner, by means of this application under
section 482 of the Code of Criminal Procedure, has invoked the
inherent jurisdiction of this Court with prayer to quash the order
dated 10.09.2012 passed by the Chief Judicial Magistrate,
Bhagalpur in Shahkund P.S. Case No. 31 of 2009, whereby
cognizance has been taken against the petitioner for the offence
under section 406 of the Indian Penal Code.

The contention of the petitioner is that no offense
against the petitioner is disclosed and the present prosecution
has been instituted with *mala fide* intention for the purpose of



harassment. Petitioner and the opposite party no. 2 are partners of the firm, namely, NEW BRONO SILK and due to dispute in business the present false and fabricated case has been lodged. It is further submitted that the claim amount, which has been found due against this petitioner, has already been deposited through various bank drafts, which would be evident from Annexure-2. However, the dispute persisted, and a Panchayati was convened to settle the dispute in which it was agreed vide Annexure-3 that Rs. 4,72,000/- has been paid by the petitioner and further petitioner has made payment of Rs. 3,00,000/- by way of different bank drafts. It is further submitted that the rest amount has already been paid to the opposite party no. 2 in cash, but with mala fide intention the present case has been lodged.

Learned counsel appearing for the opposite party no. 2 submits that the present case is of misappropriation of Rs. 20,14, 234/- which was also found true by the police during investigation. Petitioner has paid only Rs. 7,45,000/- against the supply of Bhagalpuri Silk for Rs. 27, 59, 234/-.

Considering the materials available on record and the rival submissions of the parties, this Court finds that the matter involved relates to accounting. Petitioner claims to have paid the entire amount whereas the opposite party no. 2 claims



that he has not received the full payment. Opposite party no. 2 admits to have received some payment from the petitioner. If there would have been dishonest intention on the part of the petitioner then he would not have made any payment. The Hon'ble Supreme Court in several pronouncements has held that allegations arising out of a contractual matter where some payment has been made and rest not paid does not make out a criminal offence. The dispute involved is civil in nature.

In view of the discussions made above, this Court finds that the order taking cognizance dated 10.09.2012 passed by the Chief Judicial Magistrate, Bhagalpur in Shahkund P.S. Case No. 31 of 2009 is not sustainable in the eye of law. Accordingly, the same is, hereby, quashed.

The application stands allowed.

(Arvind Srivastava, J)

mcv/-

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