# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Criminal Miscellaneous No.27155 of 2014**

Arising Out of PS.Case No. -633 Year- 2010 Thana -PATNA COMPLAINT CASE District-PATNA

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1. Mayur Patel @ Mayur Rameshchandra Patel S/o Shri Ramesh Chandra Patel
2. Ramesh Chandra Patel S/o Late Govind Bhai

   Both are Residents of Krishna Nagar, Room No. 133, Dr. Ambedkar Road Chamber Bagh Parel Mumbai-12, P.S. Bhoybar Mumbai, Maharashtra.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. Sandip Kumar S/o Saroj Singh Resident of Village Hakikatpur, Bakhityarpur, P.O. + P.S. Bakhtiyarpur Halmokam Naya Tola Madhopur, Bakhtiyarpur, District Patna.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Prem Chandra Yadav

For the Opposite Party/s : Mr. Manish Kumar No. 2

Mr. Avinash Kumar Singh

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

ORAL JUDGMENT

**Date: 08-08-2017**

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 14.11.2011 passed by the learned Judicial Magistrate, 1st Class, Barh in Complaint Case No. 633 of 2010 whereby and whereunder the Magistrate finding prima facie case for the offence under Sections 420, 406, 120-B of the Indian Penal Code and 138 of the N.I. Act summoned the petitioners.

2. Heard both sides and perused the record.

3. The Opposite Party No. 2 filed a Complaint Case No.

633 (C) of 2010 on the file of A.C.J.M., Barh, Patna alleging inter alia that these petitioners, who were brokers / sub-brokers in share market, took huge amount from the complainant and his relatives for investment in share market, which on calculation came to Rs. 53,23,000/-. The said money was returned to the complainant as per account payee post dated cheque. The complainant deposited the said cheque in Bank for clearance but it was dishonoured as the account was closed on 31.12.2008. The complainant on S.A. and other witnesses supported the allegation and the learned Magistrate finding prima facie case summoned the petitioners as stated above.

4. It has been submitted that the petitioner No. 1 is the son of the petitioner No. 2. The petitioner No. 1 is a registered sub-broker carrying business in the name and style of M/s Mint Stock Broking. The petitioner No. 1 never issued cheque for an amount of Rs. 53,23,000/- to the complainant. The cheque book of the petitioners got misplaced, which was used by the complainant with a purpose to extort money. The complainant had taken money from these petitioners and on demand, the complainant gave a cheque for an amount of Rs. 3,17,000/- on 22.12.2010 in favour of the petitioner no. 1. The petitioner no. 1 deposited the same in bank, but it was dishonoured on account of closure of the account of the complainant. The petitioner no. 1 gave a legal notice to the complainant and

thereafter, filed a complaint case No. 5302 of 2011 against the wife of the complainant in the court of Metropolitan Magistrate, Dadar Mumbai. The learned Magistrate without going into the merit of the case has passed the impugned order in mechanical manner, which is not sustainable in law.

5. The learned APP for the State, on the other hand, opposed the submissions.

6. On perusal of complaint petition and documents on record, I find that the petitioners had taken money to the tune of Rs. 53,23,000/- on several occasion for investment in market, which on calculation came to Rs. 53,23,000/-. The petitioners fraudulently gave a cheque for the said amount, which were actually not in the credit of the petitioners. The petitioners in spite of repeated demand did not pay the money and thereby, cheated the complainant and also committed breach of trust. The complainant in his S.A. and other witnesses at the time of enquiry have supported the allegation of committing breach of trust and cheating. The court below has rightly summoned the petitioners on the basis of material on record.

7. In view of the above facts, I do not find any illegality in the impugned order requiring any interference under inherent jurisdiction under Section 482 of the Code of Criminal Procedure. This application is devoid of merit and the same is, accordingly,

dismissed.

**(Sanjay Kumar, J)**

ajaypd./-

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| AFR/NAFR | NAFR |
| CAV DATE | NA |
| Uploading Date | 11.08.2017 |
| Transmission Date | 11.08.2017 |