IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35240 of 2012

Arising Out of PS.Case No. -330 Year- 2010 Thana -Kadamkuan District- PATNA

==

1. Kripa Nath Singh S/O Shyam Bahadur Singh Resident Of Mohalla- Pustaklaya Lane, East Lohanipur, P.S.- Kadam Kuan, District- Patna
2. Amit Kumar S/O Awadh Bihari Singh Resident Of Plot No. 3/C-D, Block Goyala Dairy Road, Near Dwariak Sec.19, Kutub Bihar, Phase-1, New Delhi-11

.... Petitioners

Versus

1. The State Of Bihar
2. Khalid Raza @ Sajid Raja S/O Said Karim Raja Resident Of 367, Mill Brij Road, Cuimentan, New Gersy 08021 (U.S.A.)

.... Opposite Parties

==

Appearance :

For the Petitioner/s	:	Mr. Manindra Kishore Singh
For the Opposite Party/s	:	Mr. Humayu Ahmad Khan, APP
For the Opposite Party No. 2	:	Mr. Ajay Kumar Chakraborty

==

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-05-2017

Heard Mr. Manindra Kishore Singh, the learned counsel for the petitioners, Mr. Ajay Kumar Chakraborty, learned counsel for the O.P. No. 2 and the learned APP for the State.

2. The petitioners seek quashing of the order dated 20.08.2011 passed by the learned Chief Judicial Magistrate, Patna in Kadamkuan P.S. Case No. 330 of 2010 (G.R. No. 5476 of 2010).

3. The facts in brief is that the Opposite Party No. 2 lodged F.I.R. with Kadamkuan Police Station on 30.10.2010 alleging therein that he is non resident of India and citizen of

America. He came Indian two months ago to meet his relatives and friends. He has further alleged that on 07.08.2010, his friend namely Zahid Hussain requested him for monetary help for solemnizing the marriage of his daughter. The informant gave an amount of Rs. 20,000/- in cash and assured to send more money after arranging from relatives in America for which he has requested to provide him a bank account number. The said Zahid Hussain had no bank account and so, these petitioners, who were also acquainted with the informant, asked him to transfer the amount in his bank account No. 025001006588 of petitioner No. 1 in ICICI Bank so that the petitioner no. 1 after withdrawing the amount may hand over the same to Zahid Hussain. The informant returned back America and after arranging money transferred 1900 U.S. Dollar i.e. Rs. 1,80,658/- according to Indian Currency. The petitioner No. 1 on receipt of the said amount withheld the same and did not hand over to Zahid Hussain. The informant suspecting some foul play and on getting information that the said money has not been given to his friend, visited India and contacted the petitioner no. 1, who finally refused to pay the said money. The informant in such circumstances lodged the case on the basis of which the present Kadam Kuan P.S. Case No. 330 of 2010 was registered. After investigation, police submitted charge-sheet on

31.07.2011 against the petitioners for the offence under Section 406 / 34 of the Indian Penal Code. The learned C.J.M. took cognizance on 20.08.2011 against the petitioners and transferred the case for trial to the Judicial Magistrate, 1st Class, Patna.

4. The learned counsel for the petitioners submits that prior to lodging of the present case, the petitioners had filed a complaint case No. 2958 of 2010 on the file of C.J.M., Patna, on 28.10.2010 for the same occurrence. The said complaint case was filed only against the petitioner no. 1. The learned Magistrate after enquiry took cognizance for the offence under Section 406 of the Indian Penal Code against the petitioner No. 1. The facts and occurrence of both cases are one and the same and so, the petitioners cannot be tried twice on the principle of jeopardy in violation of Article 20(2) of the Constitution of India. There is absolutely no allegation of criminal breach of trust against the petitioner No. 2 in the complaint case No. 2958 of 2010 and so, the impugned order is not sustainable in view of the cognizance already taken in other case.

5. Learned counsel for the Opposite Party No. 2 as well as the learned APP opposed the submissions.

6. Perused the documents which are annexed with the application. It is true that the Opposite Party No. 2 has lodged two cases and in both cases, the Magistrate has taken cognizance for the offence under Section 406 of the Indian Penal Code. The annexures appended with the application show that the Opposite Party No. 2 (Complainant) had transferred the money in the account of petitioner no. 1 in ICICI Bank. In course of investigation, police submitted charge-sheet on the basis of which cognizance for the offence under Section 406 of the I.P.C. has been taken by the learned lower court. The materials available on record show that a prima facie case is made out under Section 406 of the Indian Penal Code. The petitioner will have liberty to raise this point before the court below in view of the provision under Section 210 of the Cr.P.C.

7. In view of the discussions made above, I do not find any merit in this application and the same is, accordingly, rejected.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.05.2017
Transmission Date	22.05.2017