

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38993 of 2015

Arising Out of PS.Case No. -2662 Year- 2014 Thana -MUZZFARPUR COMPLAINT CASE
District- MUZZAFFARPUR

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1. Ashish Kumar @ Shankar Kumar @ Ashish Kumar Sharaf S/o Sri
Bhagwati Lal @ Bhagwati Sharaf Resident of Mohalla new Area
Sikandarpur, P.S. Town, District Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Anup Kumar @ Anup Kumar Kejariwal S/o Late Anand Kejariwal C/o
M/s Lalita Enterprises, Resident of Mohalla Shankar Nagar Mithanpura,
P.S. Mithanpura, District Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nand Kumar Singh

For the Opposite Party/s : Mr. Atul Chandra(App)

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**

ORAL ORDER

15 20-02-2017 Heard learned counsels for the petitioner, complainant
and the State.

The petitioner is apprehending arrest in a complaint case
wherein process has been directed to be issued after cognizance
being taken under Section 420 of the Indian Penal Code and
section 138 of N.I. Act.

The prosecution case is that the complainant being an
acquaintance of the petitioner, gave loan of Rs.400000/- on
13.12.2013 under an assurance that the said amount will be
returned within three months but the petitioner failed to return the
same but subsequently gave a cheque of Rs.3,50,000/- and assured



to return rest Rs.50000/- subsequently. The cheque was presented before the bank when it got bounced due to insufficient fund. The complainant sent legal notice to the petitioner and ultimately filed Complaint Case No. 1243 of 2014 on 4.9.2014. Subsequently, the complainant and the petitioner entered into a compromise and the petitioner agreed to return Rs.4,50,000/- which included the legal expenses of the complainant. Consequently, the complainant withdrew Complaint Case No. 1243 of 2014 on 28.8.2014 upon issuance of cheque no. 595919 dated 1.9.2014 by the petitioner in favour of the complainant which got dishonoured on 6.9.2014 due to insufficient funds in the account of the petitioner when a legal notice was again sent but no response, hence, the present complaint.

It is submitted by the learned counsel for the petitioner that there is business relationship between the petitioner and the complainant and money was given in that transaction. The petitioner returned Rs.3,50,000 to the complainant by making payment of rupees forty thousand in cash in February, rupees one lac paid in cash in two installments of rupees fifty thousand each and rupees fifty thousand through cheque dated 12.3.2014, rupees one lac fifty thousand was adjusted against 130 pieces mobile phones supplied to the complainant.

Learned counsel for the complainant submits that



Rs.3,50,000/- were paid through banking channel and the same was credited in the account of the petitioner. The account statement is contained in Annexure A to the counter affidavit and the said amount was withdrawn by the petitioner on 13.12.2013 which gets reflected from the account statement of the petitioner (Annexure B to the counter affidavit) and rest fifty thousand rupees was given in cash.

It appears that taking of money is not being denied by the petitioner nor the issuance of both cheques which were presented by the complainant before the bank. Hence, the petitioner has committed forgery and the petitioner is habituated in dealing with other people in similar manner.

Having heard learned counsel for the parties, it is apparent that the matter is pending since 1.10.2015 before this Court and several adjournments were granted. On joint prayer of the parties, the matter was referred to Mediation but the report of the Mediator at Flag – A dated 26.11.2015 reflects that the issue could not be resolved through the process of mediation. It does not appear that there is any feasibility of the issue being reconciled.

In the circumstances, let the learned court below consider the prayer for regular bail of the petitioner without being prejudiced by this order, in case the petitioner surrenders within six



weeks from today in connection with Complaint Case No. 2662 of 2014 pending in the court of learned SDJM (East), Muzaffarpur.

This application is disposed of with the aforesaid observation/direction.

(Dinesh Kumar Singh, J)

Anil/-

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