

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38961 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SIWAN

- =====
1. Jitendra Sharma @ Doctor Saheb
 2. Jai Prakash Sharma, both sons of Murarilal Sharma, resident of Village Govindpur, PO Kunjauli, PS Sadabad, District Hathras (U.P)

.... Petitioners

Versus

1. The State of Bihar
2. Mohammad Majeed, son of Md. Haleem, resident of Mohalla Mokhdum Sarai, Lahera Tola, Siwan, PS Sarai O.P. (Siwan Nagar), District Siwan

.... Opposite Party

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Appearance :

For the Petitioners	:	Mr. Manish Kumar No. 2
For the State	:	Mr. Abhay Kumar No. 1, APP
For the O. P. No. 2	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Akhileshwar Singh

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 16-11-2017

Heard learned Counsel for the petitioners as well as the learned Counsel for the State as also the learned Counsel appearing on behalf of Opposite party No. 2.

2. The petitioners seek quashing of the cognizance order dated 19.9.2011 passed by the Judicial Magistrate, 1st Class, Siwan, in Complaint Case NO. 1909 of 2011, thereby taking cognizance of the offence under Sections 417, 418 and 120B of the IPC and issuing summons to the petitioners to stand trial in the case.

3. The brief facts in the complaint lodged by the complainant (O.P. No. 2 of this petition) is that the complainant agreed to purchase 25 trucks of potato from the accused and on that account he paid in total Seventeen Lakhs rupees. Sixteen Lakhs rupees transmitted to the account



of the accused and One Lakh rupees was given in cash. This money was transferred in between the period 18.2.2011 to 20.5.2011. It is alleged that after making payment no any quantity of potato was supplied to the complainant, so he asked to return back his money, but the money was also not returned.

4. Learned Counsel appearing on behalf of the petitioners submits that in fact the money was paid not by the complainant rather it was paid by his son Serajuddin and they have already supplied the potato to him. It is also submitted that the complaint itself disclosed the fact that the complainant and the accused had been dealing in the business prior to this deal also, so in case of business transaction *prima facie* offence under Sections 417 and 418 of the IPC is not attracted. In support of his contention he places reliance on the two decisions reported in **(2005) 10 SCC 228** in the case of **Anil Mahajan Vs. Bhor Industries Ltd. & anr.** and the other in the case of **Hotline Teletubes and Components Ltd. & ors.** reported in the same law journal at page 261.

5. Contrary to this learned Counsel appearing on behalf of Opposite party No. 2 submits that the accused-petitioners themselves admit of receiving Seventeen Lakhs rupees from the complainant and out of that Sixteen Lakhs rupees was transmitted to the bank account of the accused and refers to para 8 and 11 of this application filed by the petitioners admitting regarding payment of that amount and further submits that in para 11 and 12 the petitioners have stated that potato was supplied. The complainant's company is Majid and Company, a registered



company, and the documents enclosed by the petitioners showing supply of potato to Serajuddin and Company and not to the company of the complainant. Moreover, son of the complainant is not engaged in selling potato or any other business rather he is a student.

6. Having considered the rival submissions and on perusal of the record the Court finds that the case of the complainant is that Seventeen Lakhs rupees was paid to the accused-petitioners for supply of 25 trucks of potato, but no any document has been filed by the petitioners showing the payment of money by Serajuddin and not by the complainant. It is settled position that any disputed question of fact cannot be decided in the jurisdiction under Section 482 of the Code of Criminal Procedure. It is not that the allegations do not make out the offence in which cognizance has been taken; so the prosecution cannot be stifled at this stage.

7. Hence this application stands dismissed.

(Arun Kumar, J.)

Snkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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