

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.8021 of 2014

Arising Out of PS.Case No. -3 Year- 2011 Thana -HASANPUR District- SAMASTIPUR

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Om Prakash Kesari @ Arbind Kumar Kesari Son of Late Jagarnath Kesari Resident
of Village / Mohalla - Bishwanath Nagar, P.S.- Begusarai, District - Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
2. Nishant Agarwal Son of Rajendra Agrawal Proprietor M/S Ganpati Traders,
Hasanpur Road, P.S.- Hasanpur, District - Samastipur

.... Opposite Party/s

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Appearance :

For the Petitioner : Mr. Abhimanyu Sharma, Advocate
For the State : Mr. C. Sen Pd. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 23-08-2017

The petitioner seeks quashing of the order dated 07.09.2013, passed by ACJM, Rosera at Samastipur in Hasanpur P.S. Case No.03 of 2011 whereby the learned ACJM, Rosera at Samastipur has taken cognizance under Sections 406/34 IPC.

2. The petitioner is one of the accused in the aforesaid police case and allegation is that he introduced complainant to one another accused Abdul Jamil, proprietor of Abdul Agro Product Pvt. Ltd., Chiknauta. The petitioner also introduced the complainant to two other accused, namely, Abdul Satar and Abdul Amirul who are the nephew of Abdul Jamil. They purchased maize from the shop of the complainant worth Rs.1,94,800.28/- and only paid Rs.32,000/- in cash and the rest amount was to be paid within two months but the same was not paid.

3. Learned counsel for the petitioner submits that as far as this petitioner is concerned, there is no any entrustment made by the complainant to him. The maize was purchased by other accused persons. Only allegation is that he introduced them to the complainant so if the entire allegation is taken into



account against the petitioner, no *prima facie* case of breach of trust is made out against him, whatever the liability of making payment is that is with the purchasers.

4. Learned Additional Public Prosecutor appearing on behalf of the State supports the impugned order.

5. Having considered rival submissions and on perusal of records, it is evident that only allegation against the petitioner is of introducing the complainant with accused persons who are purchasers of the maize from the firm of the complainant so it is not the case that maize was delivered to the petitioner rather it was delivered directly to the purchaser so there is no any entrustment of any property with the petitioner; so taking into consideration the entire allegation against the petitioner in particular, no *prima facie* case under Section 406 IPC is made out against him.

6. In the result, the order of cognizance dated 07.09.2013, passed by the ACJM, Rosera at Samastipur in Hasanpur P.S. Case No.03 of 2011 with respect to the petitioner, namely, Om Prakash Kesari @ Arbind Kumar Kesari and subsequent criminal proceeding only against him is set aside.

7. The application stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
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