IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17379 of 2014

Arising Out of PS.Case No. -1828 Year- 2012 Thana -PATNA COMPLAINT CASE District-PATNA

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1. M/s P.P. Publication
2. Pravesh Gupta, Director of P.P. Publication
3. Pratik Gupta, son of Pravesh Gupta, Director of P.P. Publication
4. Poonam Gupta, wife of Pratik Gupta, Director of P.P. Publication, all resident of 6/12 West Patel Nagar, New Delhi-110008.

.... Petitioner/s

Versus

1. The State of Bihar
2. SH. Abdin, son of not known, Proprietor of M/s Abdin Enterprises & Company, Flat No.-405, Pushpanjali Complex, Opposite Police Check Post, Boring Road, Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Ojha, Advocate

For the Opposite Party/s : Mr. Nawal Kishore Prasad, APP
Mr. Gautam Kejriwal, Advocate
Mr. Mohit Agrawal, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 03-08-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 23.09.2013 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.1828-C of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Sections 403, 418, 420/34 Indian Penal Code.

2. It has been submitted on behalf of the petitioners that from the Complaint Petition it appears that there is no *mens rea* on the part of the petitioners. He has further submitted that after issuing legal notice dated 16.05.2012 (Annexure-2) on behalf of these petitioners to the complainant due to dishounour of cheque issued by him with endorsement that ‘account closed’, the complainant had sent notice dated 05.06.2012 to the petitioners stating that `38,340/- is due to them and also requested to return the two cheques deposited by him as security with the petitioners. Immediately just after 24 days of sending the notice, complaint case was filed by the complainant against the petitioners alleging that they apprehend that two cheques deposited with the petitioners as Security may be misused.

3. The learned Magistrate after holding enquiry has found *prima face* case against these petitioners for the offence under Section(s) 403, 418, 420/34 Indian Penal Code.

4. Learned counsel for the petitioners has pointed out Solemn Affirmation of the complainant, wherein, the complainant has stated to a Court’s question that cheque has not been misused till date.

5. It is alleged in the Complaint Petition that in course of business transaction the complainant issued two cheques bearing No.936982 and 936990 of Canara Bank, Rajendra Nagar Branch, Patna, in favour of the petitioner No.1 and delivered the same to the petitioners on 01.03.2011, which was accepted by them on the same day. Thereafter, the petitioner supplied books to the complainant and business continued till 31.03.2012. Thereafter, the business transaction between the parties came to an end. By that time, the complainant had purchased books worth `12,57,556/-, whereas, till that date the complainant had paid amount of `12,95,896/- to the petitioners either through cash or through cost of the returned books as well as other modes. The ledger account has been annexed as Annexure-1.

6. It is further alleged that after closure of the business on 31.03.2012, the complainant made demand with the petitioners for reimbursement of closing balance amount amounting to `38,340/- as well as return of the two cheques deposited as security with them but the accused persons evaded the request.

7. It is further alleged in the Complaint Petition that behaviour of the petitioners shows that they are intentionally planning to grab the balance amount of the complainant and also to misuse both cheques.

8. Legal notice was sent to the petitioners on 05.06.2012 and finally complaint was filed on 29.06.2012 against the petitioners.

9. The point for consideration before this Court is that: ***Whether the complaint filed by the complainant on 29.06.2012 against the petitioners was bonafide and the allegations made in the Complaint Petition contains any mens rea on the part of the accused?***

10. There is allegation in the Complaint Petition that the complainant suspects from the conduct of the petitioners that they are trying to grab the balance amount of the complainant i.e. `38,340/- and also planning to misuse both the cheques deposited by the complainant with the petitioners as security. Solemn Affirmation of the complainant has been read over by the counsel for the petitioners. This Court has also perused the Solemn Affirmation of the complainant available on record, wherein, to a Court's question, the complainant has specifically stated that the cheque has not been misused till date.

11. On the other hand, there is specific statement on behalf of the petitioners that prior to lodging of the complaint, notice, dated 16.05.2012, was sent to the complainant vide Annexure-2 informing that one of the cheque issued by the complainant bearing no.936982 dated 10.04.2012 for `4,80,000/- drawn on Canara Bank, Rajendra Nagar, Patna, has been dishonoured with endorsement that "Account Closed". It is mentioned that the aforesaid cheque was first presented in the Bank on 10.04.2012, which was returned with endorsement "KINDLY CONTACT DRAWER/DRAWEE BANK AND PLEASE PRESENT AGAIN". Thereafter, the cheque was again presented by the complainant in the bank on 01.05.2012, which has been dishonoured with endorsement that "ACCOUNT CLOSED" and the aforesaid notice of dishonour was received by the complainant from the bank on 02.05.2012.

12. The legal notice, dated 05.06.2012, was sent by the complainant, admittedly, after the notice dated, 16.05.2012, sent by the petitioners (Annexure-2). It further appears that immediately after sending notice dated, 05.06.2012, just after 24 days, the complainant filed the instant complaint. It further appears that the petitioners have also filed complaint against the complainant on 05.07.2012 in the Court of the Additional Chief Metropolitan Magistrate, Delhi, and in that case the learned Metropolitan Magistrate has found *prima facie* case against the complainant under Section 138 of the Negotiable Instruments Act, 1881.

13. Counsel for the petitioners has relied on the decision of the Supreme Court in the case of ***Binod Kumar & others Vs. State of Bihar & Ors.*** reported in ***2015 (1) PLJR (SC) 120***, wherein, the Hon'ble Supreme Court has held that where essential ingredients of Section 405, 420 Indian Penal Code are missing, the prosecution is liable to be quashed.

14. In the instant case, from the perusal of the allegation in the complaint as well as Solemn Affirmation of the complainant, this Court finds that the basic ingredients of dishonour, misappropriation and cheating are not there.

15. Counsel for the Opposite Party No.2 has relied on the judgment of the Supreme Court in the case of ***Suryalakshmi Cotton Mills Ltd. Vs. Rajvir Industries Ltd. & others*** reported in ***(2008) 13 SCC 678,*** wherein, Hon'ble Supreme Court has held that when blank cheque is issued to a person, who misappropriates the same or used the same for a purpose for which the same was not issued, the case under Section 406 Indian Penal Code is made out.

16. In the instant case, facts are totally different. There is no case of the complainant that cheques issued by the complainant have been misappropriated or the cheques have been used for the purpose for which the same was not issued. The complainant to a Court's question in Solemn Affirmation itself has stated that the cheque has not been misused till date.

17. In such circumstances, this Court is of the view that the instant Complaint Petition filed by the complainant after issuance of notice dated 16.05.2012, is just to save himself from the criminal prosecution, which may likely to come against him for dishonour of one of the cheque issued by the complainant to the petitioners on 10.04.2012 with endorsement that "ACCOUNT CLOSED". As such, continuance of the criminal proceeding against the petitioners is abuse of the process of Court and mere harassment to the petitioners.

18. Accordingly, the impugned order dated 23.09.2013 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.1828-C of 2012 along with entire criminal proceeding against the petitioners is hereby quashed.

19. The application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	**AFR**
CAV DATE	**N/A**
Uploading Date	**16-08-2017**
Transmission Date	**16-08-2017**