

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13725 of 2014

Arising Out of P.S.Case No. -608 Year- 2003 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

- =====
1. Dharmendra Kumar Son of Shyam Bihari Paswan
 2. Shyam Bihari Paswan son of Bashudeo Ram Both Resident Of Village- Painar, P.S- Nokha, Distt- Rohtas.

.... Petitioners

Versus

1. The State Of Bihar
2. Sanjay Kumar Chaurasiya, son of Tribeni Prasad, resident of village-Nokha (Station Road)) P.S.Nokha, District-Rohtas

.... Opposite Parties

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Appearance :
For the Petitioners : Mr. Aditya Prakash Sahay, Advocate
Mr. Amresh Kumar Sinha, Advocate
For the Opposite Party : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 24-07-2017

Heard.

2. This criminal miscellaneous application has been filed under Section 482 of the Cr.P.C. to quash the order dated 21.09.2013 passed in Cr.Revision No.441 of 2012 by Adhoc Additional Sessions Judge-Ist Rohtas at Sasaram whereunder he affirmed the order dated 19.09.2012 whereunder the learned Magistrate refused to discharge the petitioner from the offence in question.

3. The facts in brief is that the Opposite Party No.2 filed a complaint case on the file of CJM, Sasaram alleging inter-alia that the petitioners used to take article on credit basis and in due course a sum of Rs.1,25,590/- fell due to the credit of the petitioners in said business transaction. The petitioners in spite of repeated demand did not pay the said amount and on 22.06.2003 when the



complainant visited at their place, the petitioners abused and assaulted and threatened to do away with his life. The complainant Opposite Party No.2 in course of inquiry supported the allegation and the Magistrate finding prima-facie case took cognizance and summoned the petitioners to face the trial.

4. It has been submitted that the dispute between the parties arose in connection with business transaction for which there is civil remedy. The complainant had filed a civil suit bearing Money Suit No.08 of 2004 for realization of Rs.1,25,590/-. The said suit was contested and the claim of the complainant Opposite Party No.2 was refused. The learned Sub Judge-I examined the genuineness of his demand and receipt allegedly given by this petitioner. The Civil Judge decided both the issues against the complainant and the suit was dismissed on 19.08.2008. The complainant has not filed any appeal against the said judgment and decree and the same has attained finality.

5. Learned counsel submits that in face of clear finding of civil court decided in presence of both the parties, the criminal prosecution of these petitioners would amount to abuse of process of the Court so the proceeding is fit to be quashed.

6. Learned APP concedes to the submissions of the learned counsel that the dispute between the parties is purely a civil dispute arising out of business transaction. In this case, notices were issued to the Opposite Party No.2 which was duly served. The Opposite Party No.2 in spite of opportunity did not appear to oppose the submissions. From the complaint petition, it appears that the Opposite Party No.2 filed complaint case alleging that these petitioners committed breach of trust and cheated him by retaining the amount of Rs.1,25,590/- which accrued due against them. The complainant filed Money Suit No.8 of 2009 with respect to said amount. The petitioner no.1 appeared and



contested the suit. The issues relating to dues amount against this petitioner was disbelieved and the suit was dismissed on contest. The said judgment has attained finality as no appeal has been filed as submitted by the learned counsel for the petitioners.

7. In view of the adjudication of the suit between the parties in full-fledged trial by Civil Judge, the criminal prosecution of these petitioners on similar fact cannot be sustainable.

8. In the facts and circumstances, the order dated 21.09.2013 taking cognizance as well as criminal prosecution of these petitioners is quashed. This criminal application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	31.07.2017
Transmission Date	31.07.2017

