

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39481 of 2013

Arising Out of PS.Case No. -985 Year- 2011 Thana -BUXAR COMPLAINT CASE District-
BUXAR

- =====
1. Rajan Prasad Gupta @ Rajan Prasad son of Rameshwar Prasad Gupta
 2. Rameshwar Prasad Gupta @ Rameshwar Nath Gupta son of Vishwanath Prasad Gupta

Both are resident of Purana Chauck Buzar, Police Station- Buxar (T),
District - Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Amit Kumar Kesari son of Kishun Prasad Kesari, resident of Purana Chauck Buzar, Police Station - Buxar (T), District Buxar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Kumar Sinha, Advocate

For the Opposite Party No.2 : Mr. Bachan Ji Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 08-04-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed for quashing the order dated 20.04.2013 passed by the learned Judicial Magistrate, 1st Class, Buxar in Complaint Case No.985(C) of 2011 whereby finding a prima facie case to be made out for the offence punishable under Section 406 of the Indian Penal Code, the petitioners along with one Rahul Kumar Gupta have been summoned to face trial.



2. The opposite party no.2 filed a petition of complaint in the court of Chief Judicial Magistrate, Buxar alleging offence of criminal breach of trust and cheating.

3. The case of the complainant, as disclosed in the complaint petition, is that the accused persons are business men like the complainant and they regularly helped each other economically in time of need. They requested the complainant to part with Rs.2,95,000/- by way of friendly help. Subsequently, the accused Rahul Kumar Gupta gave certain cheques to the complainant. Those cheques were presented in the account of the complainant on two different dates i.e., on 25.08.2011 and 26.08.2011, but due to insufficiency of the fund they got dishonoured. The complainant requested the accused persons to pay the amount in cash, but the accused persons failed to do so. Seeing no way out, the complainant sent a legal notice to the accused persons, but the notice could not be effected upon them as they were not found on the given address. The complainant has alleged that believing on the words of the accused persons, he had helped them while they were in financial crisis by paying Rs.2,95,000/-, but the accused persons misappropriated the amount.

4. The complainant was examined on solemn affirmation and apart from the complainant, some witnesses were also examined



in course of enquiry conducted under Section 202 of the CrPC.

5. On completion of enquiry, the learned Magistrate summoned the petitioners and Rahul Kumar Gupta after taking cognizance of the offence under Section 406 of the Indian Penal Code (for short 'the IPC').

6. It is contended by the learned counsel for the petitioners that the entire transactions were made by the complainant with accused Rahul Kumar Gupta and it was Rahul Kumar Gupta, who had taken money and had issued cheques in favour of the complainant. He submitted that in view of the aforesaid facts, the implication of the petitioners in the present case is simply because they happen to be close relatives of the accused Rahul Kumar Gupta.

7. On the other hand, learned counsel for the opposite party no.2 submitted that in the complaint petition itself the complainant has alleged that with the consent of these two petitioners the accused Rahul Kumar Gupta had taken loan and had issued cheques in favour of the complainant which got dishonoured on their presentation.

8. I have heard learned counsel for the parties and perused the record.

9. I find that in the entire complaint save and except general and vague allegation made against these two petitioners, there is nothing to suggest that the petitioners had in any manner actively



participated in the offence. The specific case of the complainant is that it was accused Rahul Kumar Gupta, who had issued cheques in his favour, which on presentation in the account of the complainant got dishonoured. Under such circumstance, the offence, if any, would be attracted against accused Rahul Kumar Gupta alone and the petitioners cannot be made vicariously liable for any act of omission or commission on the part of the accused Rahul Kumar Gupta. Their implication in the present case appears to be only because they happen to be father and brother respectively of the accused Rahul Kumar Gupta. I further find that the complainant has clearly stated in the complaint petition that there was long standing business relationship between the parties and they used to help each other economically in the hour of crisis. If that was the kind of relationship, simply because the accused persons failed to return the money taken as friendly loan, it cannot be said that they had any dishonest intention from before. It is well settled that simply because a party fails to keep up the promise, he cannot be liable for criminal prosecution. It would be a simple case of breach of trust without *mens rea*, which is essential in order to constitute an offence under Section 406 of the IPC.

10. In that view of the matter, in the facts and circumstances of the case, allowing the prosecution to continue would be an abuse of process of the court.



11. Accordingly, the impugned order dated 20.04.2013 passed by the learned Judicial Magistrate, 1st Class, Buxar in Complaint Case No.985(C) of 2011 so far as the petitioners are concerned, is hereby quashed.

12. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.04.2017
Transmission Date	

