

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19951 of 2012

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

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Raj Kumar Pandey, S/O Mahabir Pandey, resident of Mohalla- New Jakkanpur,
Near Goriya Math , P.S.- Jakkanpur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Alam, s/o Md. Usman, resident of village- Mathurapur, P.S.- Sadar,
District- Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Lakshmikant Sharma, Advocate.
Mr.Rajesh Kumar, Advocate
For the opposite party No.2: Mr. Mazharul Hassan, Advocate
For the State : Mr. Bharat Bhushan, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 05-12-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 22.7.2010 passed by Judicial Magistrate, 1st Class, Muzaffarpur, in Complaint Case No. 24 of 2010, Trial No. 4272 of 2011, by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner for the offences under Sections 406, 417 of the Indian Penal Code and Section 138 of N.I. Act.

2. As per complaint petition the complainant has paid total amount of Rs.3,20,000/- by various cheques as mentioned in the complaint petition, to the petitioner for getting agency of Parley



Biscuit for the district of Muzaffarpur. The agency was not given to the complainant. The complainant made request to refund the money. Thereafter, on 30.4.2009 petitioner handed over a cheque bearing No. 784502 drawn on State Bank of India, Main Branch, Patna, for Rs.75,000/- which was deposited by the complainant in his account No. 30452074713 as mentioned in the complaint petition at Bhagwanpur Branch of State Bank of India which got bounced on 5.9.2012 due to insufficient balance. Thereafter, legal notice was sent and finally the complaint case has been filed.

3. The court below has by the impugned order found prima facie case against this petitioner for the offence under Sections 406, 417 of the Indian Penal Code and Section 138 of Negotiable Instrument Act.

4. Heard learned counsel for the petitioner, learned counsel for the opposite party No. 2 and learned counsel for the State.

5. Learned counsel for the petitioner has submitted that the aforesaid cheque was given in guarantee by this petitioner to one Arvind Kumar which will find mention in agreement entered into between Arvind Kumar and this petitioner annexed as Annexure-2.

6. Learned counsel for the opposite party No. 2 has submitted that all the three cheques which have been given to the



petitioner as mentioned in the complaint petition were deposited in the account by the petitioner and money was credited in his account which will be apparent from Annexure-2 series filed along with counter affidavit. Annexure-2 series of the counter affidavit is the Bank statement filed on behalf of the complainant. The complainant has also enclosed Xerox copy of Cheque No. 784502 for Rs.75,000/- alleged to have been given by this petitioner in favour of the complainant on 30.9.2009 which shows that the cheque was issued by the petitioner in the name of Md. Alam. The agreement (Annexure-2) which was referred to by the learned counsel for the petitioner is between Arvind Kumar and the petitioner. It is mentioned that the aforesaid cheque has been given as guarantee by the petitioner to Arvind Kumar.

7. Arvind Kumar has been examined during enquiry on behalf of the complainant as CPW-1 wherein he has stated that cheque for the amount of Rs.75,000/- drawn on State Bank of India was given to the complainant by the petitioner which bounced due to insufficient fund when complainant deposited the Cheque in bank.

8. The court below has on the basis of Solemn Affirmation of the complainant and statement of the witnesses recorded during enquiry and also looking into the statement of account of the Bank, legal notice and copy of the cheque issued by the



petitioner in favour of the complainant, has found *prima facie* case against the petitioner for the offence under Sections 406, 417 of the Indian Penal Code and Section 138 of Negotiable Instrument Act.

9. The learned Magistrate is only required to see *prima facie* case at the time of holding enquiry.

10. Therefore, this Court does not find any illegality in the impugned order.

11. This Criminal Miscellaneous application is accordingly dismissed.

12. The petitioner is given liberty to raise all the point as raised in this application at the time of framing of charge which shall be considered/disposed off by the court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13/12/2017
Transmission Date	13/12/2017

