

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49486 of 2013

Arising Out of PS.Case No. -1310 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Sanjay Kumar Thakur S/O Sri C.N. Thakur Resident Of Gharaunda, Opposite Esspec Workshops Mohalla- Nageshwar Colony, P.S.- Budha Colony, Distt.- Patna
 2. M/S Srijan Represent Through Sanjay Kumar Thakur Resident Of Gharaunda, Opposite Esspec Workshops Mohalla- Nageshwar Colony, P.S.- Budha Colony, Distt.- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Akansha Enterprises Represented Through Its Partner Shahsi Kumar S/O Late Rajendra Mahto Resident Of FF-15 Luv Kush Tower, Exhibition Road, P.S.- Gandhi Maidan, Distt.- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kant, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP
For Opposite Party No.2 : Mr. Hare Ram Sah, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 18-01-2017

Heard learned counsel for the petitioner, learned
Additional Public Prosecutor for the State and learned counsel for
Opposite Party No.2.

2. The petitioners are accused in complaint case
No.1310(C) of 2012 brought by Opposite Party No.2 Akansha
Enterprises. By the impugned order dated 07.05.2013 processes have
been issued against the petitioners to face the trial for the offence
under Section 420 of the Indian Penal Code as well as for the offence



under Section 138 of the Negotiable Instruments Act.

3. The petitioners have challenged the impugned order in this application under Section 482 of the Cr.P.C. on the ground that the ingredients of offence under Section 420 of the Indian Penal Code is prima facie not made out as the dispute between the parties is contractual dispute of civil nature.

4. According to the complaint petition, the complainant is a business enterprise and doing his business as super distributor. The petitioners were retailers, They took different cosmetic goods of Rs.2,37,719/- from the complainant and issued five cheques for payment. Subsequently, the petitioners took cosmetics of Rs.2,63,072/- and again they issued cheques for payment. All the cheques bounced. In the circumstances, the complainant found himself cheated.

5. Contention of the petitioner is that each and every bouncing of the cheque does not show dishonest intention of the accused to cheat the complainant at the time of initial agreement between the parties. Different reasons may be for dishonour of the cheques. Moreover, the dispute has been settled, which would be evident from the paper at pages-20 and 21. The balance-sheet at page-20 shows that some goods were returned to the complainant company and some cheques were returned to the petitioners on receipt



of the cash.

6. Contention of Opposite Party No.2 is that there is no denial that the cheques issued by the petitioners bounced due to insufficient fund, hence, the petitioner had dishonest intention in issuing the cheques knowing that the same are bound to be dishonoured.

7. The factual position of this case is clear that the petitioners have taken cosmetics for sale as retailers from the complainant and had issued cheques of payment. Some of the cheques were returned to the petitioners as the petitioners made payment in cash. Some amount was adjusted against the return of the cosmetics to the complainant by the petitioners and definitely some cheques have bounced.

8. In **Md. Ibrahim V. The State of Bihar** reported in **2009(4) PLJR SC 99**, the Hon'ble Apex Court in para-13 of the judgment examined the ingredients of offence of the cheating;

“13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention



thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived: (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).”

9. In **Hridaya Ranjan Prasad Verma v. State of Bihar**, reported in **(2000)4 SCC 168**, the Apex Court observed in para-15 of the judgment as follows:

“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty



of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

10. The law is well settled that power under Section 482 of the Cr.P.C. should be sparingly exercised with circumspection especially when the continuance of the proceeding before the Court below is an abuse of the process of the Court. The Court should have taken a great deal of caution in issuing the process, particularly, when the matters are essentially of civil nature. In this regard the reference may be made to **P.K. Deo V. The State of Bihar**, reported in **2016(1) PLJR 201**.

11. In the present case, there is no material to substantiate that petitioners had dishonest intention or fraudulent intention at the time of making of the agreement to not to pay back the cost of cosmetics purchased. Therefore, prima facie, ingredients of offence under Section 420 of the Indian Penal Code is not attracted.

12. For the reasons aforesaid, the impugned order is not sustainable in law to the extent cognizance has been taken under Section 420 of the Indian Penal Code. Hence, the same is set aside to that extent only. The trial will proceed for the offence under Section



138 of the Negotiable Instruments Act.

13. With the aforesaid observation, this application stands disposed of.

Mkr./-

(Birendra Kumar, J)

AFR/NAFR	AFR
CAV DATE	
Uploading Date	24.01.2017
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