IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6235 of 2014

Arising Out of PS.Case No. -3465 Year- 2010 Thana -KATIHAR COMPLAINT CASE District-KATIHAR

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1. Sakaldip Yadav @ Sakaldip Kumar Yadav, son of Sri Sadanand Yadav.
2. Sadanand Yadav, son of Late Adhin Lal Yadav.
   Both are residents of Village-Bhatwara, P.S.-Korha, District-Katihar.

.... Petitioners.

Versus

1. The State of Bihar.
2. Vikram Thakur, son of Nand Kishore Thakur, resident of Mirchaibari, P.S. and District-Katihar.

.... Opposite Parties.

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Appearance :

For the Petitioners : Mr. Rama Nand Poddar, Advocate.
For the State : Mr. Dashrath Mehta, A.P.P.
For the Opposite Party No.2 : Mr. Tara Nath Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
CAV JUDGMENT
Date: 7 -04-2017

The petitioners have invoked the extraordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure to quash the order dated 13.04.2011 passed in Complaint Case No.3465 of 2010, whereby the court of the Judicial Magistrate, First Class, Katihar, summoned the accused-petitioners, on inquiry under Section 202 of the Code of Criminal Procedure, finding prima facie case under Sections 406 and 420 of the Indian Penal Code and Section 138 of the N.I. Act.

2. In brief, the case is that the complainant-opposite party no.2 filed Complaint Case No.3465 of 2010 with the contention that he is a partner of the firm "Katihar Tractors" situated at Mirchaibari, Katihar. He used to sell the tractors to its intending buyers mostly on financing through the Mahindra and Mahindra Financial Services Limited, a non banking financial institution. The accused-petitioners took a tractor model 295 DLX Power steering, bearing Serial No.NPTD 383 to "Katihar Tractors" after availing finance from Mahindra and Mahindra Financial Services Limited, Purnea, who financed the loan of Rs.3,50,000/- against the price of the tractor as Rs.5,09,700/- with other expanses as Rs.37,739/-, Total Rs.5,47,439/- of which Rs.1,97,439/- was the margin money, which the accused-petitioners was required to pay. While taking the delivery of the tractor, the accused-petitioners further took Rotavater worth Rs.95000/-. As such, the total sum of Rs.2,99,815/- was to be paid by the accused-petitioners to the "Katihar Tractors" at the time of taking delivery. Against the said amount, the accused-petitioners paid only Rs.1,52,000/- and for the remaining amount of Rs.1,47,815/-, a post dated cheque no.573409 drawn on United Bank of India at its Kheria Branch was handed over to the dealer-complainant-opposite party no.2 with an assurance that the cheque will be honoured if presented to the Bank and the dealer can collect the due sum from the account of the accused-petitioner no.2 Sadanand Yadav, father of the accused-petitioner no.1 Sakaldip Yadav alias Sakaldip Kumar Yadav. The accused-petitioner no.1 Sakaldip Yadav alias Sakaldip Kumar Yadav also furnished a written commitment that the due amount will be paid to the dealer much before the date written over the cheque, i.e., 07.10.2010, failing which the dealer can produce the cheque for collection and further legal action, if necessary. As per the commitment of the accused-petitioners, the cheque was deposited by the complainant in the account of the firm “Katihar Tractors” at the State Bank of India (DRM), Katihar, for collection from the concerned Bank but the cheque was returned dishonoured by the drawee Branch with the remarks “Funds Insufficient”. The complainant-opposite party no.2, on receipt of the return of the cheque, sent a legal notice on 26.10.2010 through the Advocate to the accused-petitioners, which was acknowledged by the accussed-petitioners on 29.10.2010. In spite of the acknowledgment of the dishonoured of the check through the notice, the accused-petitioners did not bother for payment of dues. As such, the accused-petitioners committed the offence under Sections 406, 420 of the Indian Penal Code and Section 138 of the N.I. Act.

3. After filing of the aforesaid complaint case by the complainant-opposite party no.2, on inquiry under Section 202 of the Code of Criminal Procedure, the accused-petitioners were summoned through the impugned order by the court of the Judicial Magistrate, First Class, Katihar, finding prima facie case under Sections 406 and 420 of the Indian Penal Code and Section 138 of the N.I. Act.

4. Learned counsel appearing on behalf of the petitioners submits that, admittedly, Rs.1,47,815/-, was to be paid by the accused-petitioners to the firm of the complainant-opposite party no.2, but after taking the delivery of the tractor, the tractor was found defective and notice was sent to the complainant-opposite party no.2 to replace the tractor but no action was taken in that regard by the complainant-opposite party no.2. Thereafter, the accused-petitioner no.1 Sakaldip Yadav alias Sakaldip

Kumar Yadav filed Complaint Case No.2857 of 201 on 27.09.2010 against the Branch Manager, Mahindra and Mahindra Finance Services Limited, Mirchaibari, Katihar and the accused-petitioner no.2 Sadanand Yadav also filed an application on 30.07.2010 before the Branch Manager, United Bank of India, Kheria Branch, Katihar, about stopping the payment of the cheques as issued by him in favour of M/s Mahindra and Mahindra Finance Services Limited. In fact, ten blank cheques were handed over to Mahindra and Mahindra Finance Services Limited, Mirchaibari, Katihar, financer of the tractor, as security of loan taken by the petitioners for purchasing the tractor to the Agency of the complainant/opposite party no.2 and the complainant/opposite party no.2 managed to get one blank cheque to the Manager of Mahindra and Mahindra Finance Services Limited, who was the father of the complainant/opposite party no.2, and misused the cheque entering amount, which is said to be dishonoured. Moreover, no legal notice was issued by the firm of the complainant-opposite party no.2 under Section 138 of the N.I. Act to the accused-petitioners of dishonouring of the cheque, which is said to be issued by the accused-petitioner no.2. As such, the impugned order summoning the accused-petitioners for the offence under Section 138 of the N.I. Act on the basis of the complaint petition as filed by the complainant-opposite party no.2 is illegal. Further submission is that, admittedly, the cheque was issued by the accused-petitioner no.2 Sadanand Yadav in favour of the firm of the complainant-opposite party no.2, as such, the impugned order summoning the accused-petitioner no.1 Sakaldip Yadav alias Sakaldip Kumar Yadav for the offence under Section

138 of the N.I. Act is illegal.

5. From perusal of the complaint petition of the complainant-opposite party no.2, it appears that it is detailed in paragraph-4 thereof that after dishonour of the cheque as issued by the accused-petitioner no.2 Sadanand Yadav, a legal notice was sent by the firm of the complainant-opposite party no.2 on 26.10.2010, which was acknowledged by the accused-petitioners on 29.10.2010, which is not denied by the accused-petitioners, as appears from this application. So far as the submission of the learned counsel for the petitioners that summoning the accused-petitioner no.1 Sakaldip Yadav alias Sakaldip Kumar Yadav for the offence under Section 138 of the N.I. Act, while the cheque was issued by the petitioner no.2 Sadanand Yadav, is concerned, it is not in dispute that at the time of summoning the accused, on enquiry under Section 202 of the Code of Criminal Procedure, the cognizance taking court is only required to see that what offence is made out from perusal of the complaint petition, solemn affirmation of the complainant and the statements of the witnesses and what offence is made out against the accused is to be considered at the time of hearing for framing of the charge.

6. From perusal of the impugned order, summoning the accused-petitioners for the offence under Section 406 and 420 of the Indian Penal Code and Section 138 of the N.I. Act, I find no illegality therein amounting to an abuse of the process of the court for interference with the same in an extraordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure.

7. Accordingly, this application stands dismissed. However, the petitioners would be at liberty to raise their point, raised herein, in the court below at the appropriate stage.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	28.03.2017
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