

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42374 of 2008

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

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1. Smt.Meena Devi, wife of Sri Umesh Prasad Gupta
 2. Umesh Prasad Gupta, son of Sri Laxaman Prasad Gupta
Both resident of Near Sonali Petrol Pump, Mahatma Gandhi Setu, P.S.-
Agamkuan, Town and District- Patna
 3. Amar Nath Gupta, son of Rameshwar Prasad Gupta, resident of Mohalla-
Brahampura Chowk, P.S. Sadar, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Mahesh Prasad Gupta, son of Sri Laxman Prasad Gupta, resident of Mohalla-
Meena Bazar, P.S.- Alamganj, Town & District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. L. N. Das, Adv.
For the State : Mr. Ram Sumiran Rai, APP
For the Opposite Party No.2 : Mr. Shailendra Kr. Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 05-09-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for quashing the order dated 15.09.2008 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 1924(C) of 2007 whereby the application preferred under Section 239 of the Cr.P.C. for discharge has been rejected.

2. Learned counsel for the petitioners has submitted that even if the entire allegations made in the complaint and the evidence collected in support of the same are taken to be true, no cognizable



offence would be attracted against the petitioners. He has contended that the learned Magistrate has erroneously taken cognizance of the offence punishable under Sections 406 and 420 of the Indian Penal Code (for short 'IPC') and has summoned the petitioners to face trial. He has submitted that there is no averment so as to infer any fraudulent or dishonest inducement made to the complainant by the petitioners pursuant to which he parted with any amount of money.

3. On the other hand, learned counsel for the complainant has submitted that there is specific allegation against the petitioner no.1 that she received Rs.1,50,000/- as loan from the complainant and signed one agreement on bond and promised to refund the money within three years in installments, but she has failed to comply with the promise made. He has contended that the allegations made in the complaint would certainly attract the ingredients of the offences punishable under Section 406 and 420 of the IPC.

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

5. The opposite party no.2 has filed the complaint case stating therein that he is a businessman having shop situated at Rajendra Nagar, Patna in the name and style of Rajdhani Rubber House. The accused petitioners are also businessmen and they have a shop at Ganga Bridge Road near Sonali Petrol Pump, Agamkuan,



Patna. He has stated that the accused Meena Devi in collusion with the accused Umesh Prasad Gupta and Amarnath Gupta received Rs.1,50,000/- as loan from the complainant on 07.05.2006 for which she had executed an agreement and accused no.2 and 3 became attesting witness and guarantor respectively. According to the agreement, the accused Meena Devi had promised to return the amount of money within three years in installments of Rs.4500/- per month and in case of failure to return the amount the accused Meena Devi had undertaken to hand over the original document of the landed property and deliver its possession to the complainant. However, neither the amount was returned to the complainant nor the accused handed over the papers of the landed property nor handed over possession of the property to him.

6. The complainant was examined on solemn affirmation and, in course of inquiry, some witnesses were also examined in support of the complaint. After summoning the accused, at the stage of framing of charge, the petitioners filed an application for discharge under Section 245 of the Cr.P.C. A plea was taken that the petitioners are closely related to the complainant and there was no inducement on the part of the petitioners on the basis of which the complainant had parted with the money and, hence, no ingredients of any criminal offence were attracted. However, the application for discharge was



rejected by the jurisdictional Magistrate, vide order dated 15.09.2008, which has been challenged in the present proceeding.

7. On examination of record, I find that the petitioner no.2 Umesh Prasad Gupta is the elder brother of the complainant Mahesh Prasad Gupta, petitioner no.1 Smt. Meena Devi is his wife and petitioner no.3 Amar Nath Gupta is the brother of petitioner no.1 Smt. Meena Devi. In the entire complaint there is no averment so as to infer any fraudulent or dishonest inducement having been made by the petitioners pursuant to which the complainant parted with an amount of Rs.1,50,000/-. The only allegation made in the complaint is that after taking money, the petitioner no.1 did not return the amount and she also failed to hand over the original documents of the landed property to the complainant.

8. In my considered opinion, a pure and simple breach of contract by not refunding the amount of advance would not constitute an offence of cheating or criminal breach of trust punishable under Section 420 or 406 of the IPC. In this regard, one may refer to the decisions of the Supreme Court in ***Dalip Kaur & Ors. Vs. Jagnar Singh & Anr. [(2009) 14 SCC 696]*** and ***Ram Biraji Devi & Anr. vs. Umesh Kumar Singh & Anr. [(2006) 6 SCC 669]***.

9. In that view of the matter, the instant application deserves to be allowed. Accordingly, the order dated 15.09.2008



passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 1924(C) of 2007 is set aside.

11. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08-09-2017
Transmission Date	08-09-2017

