

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24143 of 2014

Arising Out of P.S.Case No. -1185 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Nitya Nand Jha, Advocate, son of Late Bal Bodh Jha, SCBA, Library No.
1, Tilak Marg, New Delhi- 110 001

.... Petitioner

Versus

1. The State of Bihar
2. Mamta Kumari daughter of Late Sanyashi Prasad Pandey, resident of
Sata Nand Singh, Retired Engineer Lal Babu Market Patel Nagar, P.S.
Shashtri Nagar, District Patna

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Mrityunjay Kumar, Advocate

For the Opposite Parties : Mr. Jitendra Kumar Singh-I, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

5 03-07-2017 Heard.

2. The petitioner seeks quashing of order dated 02.01.2013 passed by Judicial Magistrate Ist Class, Patna in Complaint Case No.1185C of 2012 (Trial No.1815 of 2013). The learned Magistrate finding prima-facie case for the offence under Sections 420 and 506 of the IPC ordered for issuance of summons against the petitioner.

3. The facts of the brief is that the Opposite Party No.2 filed a complaint case on the file of CJM, Patna alleging inter-alia that she purchased Maruti Car bearing registration no.DL-2C-E-6973 (Model 1993) on 23.12.2010 for a total consideration of



Rs.65,000/- from this petitioner. At the time of purchase, this petitioner had given assurance that the vehicle was in good condition and no repairing was required in coming next two years. He further assured that if any expense is made by the purchaser towards repairing in near future that would be paid by this petitioner. The petitioner however did not hand over any paper nor he got the vehicle transferred in the name of the complainant. The complainant made expenses of Rs.20,000/- against repairing work of the said vehicle. The complainant requested the petitioner several times to transfer the ownership or take back his vehicle after returning the cash amount of Rs. 65,000/-. The complainant had entrusted with the property, i.e., cash amount of Rs.20,000/- take towards expense and purchase of tyre on assurance of accused which he has misappropriated for his own use in violation of contract.

4. In course of inquiry, the court below recorded the statement of complainant and other witnesses and finding prima-facie case for the offence under Section 420 and 506 of the IPC took cognizance of offence and ordered for issuance of summons.

5. The learned counsel for the petitioner submits that as per complaint petition, the consideration amount was allegedly paid and vehicle was delivered to her and so no offence under



Sections 420 or 506 of the IPC is made out. The OP no.2 filed the complaint case after two years of said purchase. There was absolutely no such agreement that the petitioner would meet any expense towards repairing of the vehicle in the future. The petitioner and the complainant are lawyers and on the inclination of the complainant the petitioner sold his vehicle for a consideration of Rs.45,000/- The complainant had actually paid Rs.23,000/- and agreed to adjust the balance amount in her professional fee in connection with CWJC No.8123 of 2010. The said CWJC was filed by this petitioner and it was dismissed as withdrawn on 17.03.2011 on account of being infructuous. There was neither any entrustment of any amount nor the petitioner cheated the complainant in any way and so no offence as alleged is made out and the impugned order is fit to be quashed.

6. The learned counsel for the Informant (Opposite Party no.2) as well as learned APP opposed the submissions.

7. On perusal of impugned order as well as annexures available on record, I find that the complainant had purchased a vehicle from the petitioner for a total consideration of Rs.45,000/- The complainant paid Rs.23,000/- only and remaining amount was to be adjusted towards her professional fee. This fact finds support from annexures-5 of this application which is an affidavit of



complainant. In the said affidavit, the complainant has admitted this fact. In the said affidavit, the complainant has further stated that she would be legally responsible for maintenance, accident, road tax, police challan etc with respect to said car. She has further stated that she was fully satisfied with the vehicle after checking the same thoroughly. The said affidavit was sworn by the complainant on 27.01.2011. The petitioner has annexed Anneuxre-9 (delivery receipt) to show that the complainant received the vehicle in presence of the witness. From annexures, it is apparent that there was absolutely no such agreement to meet the expenses of repairing in future. I do not find any element of breach of trust or cheating against the petitioner.

8. In the aforesaid facts and circumstance, I find that the prosecution of this petitioner would amount to abuse of process of the court. The order dated 02.01.2013 passed by Judicial Magistrate, Ist Class, Patna in connection with Complaint Case No.1185(C) of 2012/Trial No.1815 of 2013 is quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

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