

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10198 of 2013

Arising Out of Complaint Case No. -1458 Year- 2008 Thana -COMPLAINT CASE District- - Banka

=====

Shiv Narayan Prasad Rai, s/o late Patarbhuj Rai, at present residing at Bampas Town, Deoghar, Distt.-Deoghar, State-Jharkhand

.... Petitioner

Versus

1. The State of Bihar
2. Jaikant Mandal, s/o late Mahendra Mandal, r/o village-Chandpur, P.S.-Sripathar, Distt.-Banka

.... Opposite Parties.

=====

Appearance :

For the Petitioner : Mr. Siddhartha Prasad, Advocate.
For the Opposite Party No.2: Mr. Balram Kapri, Advocate.
For the State : Mr. Balram Kapri, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-01-2017

Heard learned counsel for the Petitioner, learned counsel for the Informant and the State.

This quashing application has been filed for quashing the order dated 29.11.2012 passed by the learned Sessions Judge, Bhagalpur, by which he has dismissed Cr. Revision No. 348 of 2012 filed against the order dated 5.6.2012 passed by the learned Sub Divisional Judicial Magistrate, Banka, in Complaint Case No. 1458 of 2008 whereby summon has been issued against the petitioner for offence punishable under Section 420 of the Indian Penal Code.

The complainant Jaikant Mandal filed a complaint alleging therein that he is a poor farmer and applied for the loan to



purchase the power trailer under Samekit Gramin Vikash Yojana. The loan amount of Rs.1,15,000/- was sanctioned by the Central Bank of India, Barahat Branch. The draft of aforesaid amount was issued in favour of Santosh Enterprises who was the supplier of the power trailer. It is alleged that when the petitioner contacted the proprietor of Santosh Enterprises, he told the complainant to sign on some papers but complainant denied. Thereafter, the petitioner assured him to sign on the paper saying that it is a legal formality and after completion of it, he would be able to deliver the said power trailer but after a lapse of one year, the power trailer was not delivered to the complainant. In the meantime, the informant always contacted Santosh Enterprises about delivery of the said power trailer but in vain. Further allegation is that the complainant made a complaint before the proprietor who assured him that the same would be delivered shortly, but the company has not delivered the same. It has further been alleged that as per the norms and procedure of the Bank, the bank is charging interest for the aforesaid amount but the trailer has not been supplied even after sanction of Rs.1,15,000/- by the petitioner who had given the draft in the name of Santosh Enterprises.

During enquiry, besides solemn affirmation of the complainant, the statement of two other witnesses was recorded. The learned Sub Divisional Judicial Magistrate, Banka, by order dated



5.6.2012 after conclusion of trial, found prima-facie case under Section 420 Indian Penal Code against the petitioner and other accused persons as named in the complaint petition. Thereafter, the petitioner filed Cr. Revision No. 348 of 2012 before the learned Sessions Judge, Banka, Bhagalpur, challenging the order dated 5.6.2012 passed by the learned Sub Divisional Judicial Magistrate, Banka. The said Cr. Revision was dismissed by the learned Sessions Judge, vide order dated 29.11.2012.

This quashing application has been filed after rejection of the Cr. Revision by the learned Sessions Judge, Banka, mentioning that the Sub Divisional Judicial Magistrate, Banka, after considering the statement of the complainant on solemn affirmation and the evidence of two enquiry witnesses, came to the conclusion regarding sufficient material for the purpose of issuing process against the petitioner and others. In this manner, this Court has not been able to find any illegality either committed by the learned Sessions Judge or learned Sub Divisional Judicial Magistrate, Banka, in the impugned orders.

From the solemn affirmation of the complainant and a copy of the statement of two witnesses during enquiry annexed as Annexure-7, it appears that they have supported the case during enquiry. Therefore, this Court does not find any merit in the instant



application.

Accordingly, the application stands rejected.

However, the petitioner is at liberty to raise all the points at the time of framing of charge in the court below which shall be disposed off by the court below on its own merit without being prejudiced by this order.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	21.01.2017
Transmission Date	21.01.2017

