

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41749 of 2013

Arising Out of PS.Case No. -360 Year- 2010 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Sanjay Kumar Son Of Sri Jawahar Prasad Resident Of Mohalla-North Mandiri,
P.S.-Budha Colony, District-Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Anil Kumar @ Mahendra Prasad, S/o Sri Raghunath Prasad, resident of
Punaichak, Post Office Road, P.S.-Shastrinagar, District-Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nagendra Prasad Yadav
: Vijaya Laxmi Srivastava
For the Opposite Party/s : Mr. L.K.Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 08-08-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 11.06.2010 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 360C of 2010 whereby and whereunder cognizance has been taken against the petitioner for the offence under Sections 406, 420 of the Indian Penal Code and 138 of the N.I. Act.

2. Heard both sides and perused the record.

3. It has been submitted that the court below without considering the material on record has taken cognizance against the petitioner. There is absolutely no ingredient of criminal beach of



trust or cheating and so, no case under Section 406 or 420 of the Indian Penal Code is made out against the petitioner. The money was given by the complainant to one Shashi Bhushan Kumar @ Shashi Kumar. The petitioner has received the money through Mahendra Prasad and at the time of receiving the money, the petitioner had given N.S.C. and L.I.C. Bond along with two blank cheques as security to the complainant and it was agreed that the money was to be returned directly to Shashi Kumar or through Mahendra Prasad. The petitioner has already paid the amount of Rs. 3,50,000/- to Shashi Kumar Singh through different cheques and Bank drafts, but in spite of repeated demand, he did not return the N.S.C, L.I.C. Bond and post dated blank cheque. The complainant has used the said cheques with ulterior motive and so, no offence under Section 138 of the N.I. Act is made out. The learned A.P.P. for the State, on the other hand, opposed the submissions.

4. On perusal of complaint petition and impugned order, I find that this petitioner had issued two cheques in favour of the complainant, which on presentation in Bank bounced on account of insufficient fund. The complainant gave legal notice to the petitioner on 14.01.2010, which was not replied and thereafter, the complainant filed a complaint case for criminal breach of trust and cheating. The complainant and his witnesses at the time of enquiry



supported the allegation and the court below finding prima facie has taken cognizance and summoned the petitioner. The defence of the petitioner as regards payment made two other persons cannot be taken into consideration at the stage of taking cognizance.

5. In view of the above facts, I do not find any merit in this application. This application is accordingly dismissed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	NA
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