

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44398 of 2013

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

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1. Chandra Shekhar Ganguly S/O Late Amulya Ganguly Resident Of A-4/B, Flat No. 307, Mahadkar Residency Right Bhusari Colony, Pand Road, Police Station- Khatrud, Pune0 411038, Maharastra.

.... Petitioner/s

Versus

1. The State Of Bihar

2. Ezaz Hussain S/O Md. Jahid Hussain Resident of 203, Jagtarini Tower, Jamal Road, P.S- Gandhi Maidan, Distt- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gauranga Chatterjee, Advocate

For the Opposite Party/s : Mr. Rana Randhir Singh, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 16-11-2017

The petitioner is one of the accused in connection with Gandhi Maidan P.S. Case No.212 of 2004 registered under Section 467/468/471/420 of the Indian Penal Code. By the impugned order dated 28.04.2011 prayer of the petitioner for discharge has been refused.

2. Notice was served on Opposite Party No.2, the informant of the case, but no one appears.

3. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the State.

4. Submission of the learned counsel for the petitioner is that the impugned order has been passed in a mechanical way causing failure of justice as the ingredients of any of the alleged offences are neither disclosed in the F.I.R. nor in the material collected during



investigation, and the Court-below has completely overlooked the same. He further submits that the company in which the petitioner was working is not an accused and the dispute arose out of an agreement between the two companies. Hence, unless the company is made accused vicarious liability on the office bearers cannot be fastened.

5. According to First Information Report, the informant is M.D. of a Private Limited Company known as Ezzion Trading Company Pvt. Ltd. The petitioner was an officer of Cleenex Marketing Company. The Cleenex Marketing Company was involved in manufacturing of Agarbatti (Scented sticks). The petitioner persuaded the informant to enter into business relationship. On 19.11.2002 the informant provide a demand draft of rupees three lakhs in the name of company, to the petitioner in pursuance of an agreement signed between the representatives of two companies. A copy of the agreement is available on the lower court records. The petitioner is simply a witness on that agreement paper. Thereafter, business started. However, the Cheque issued by the Company of the petitioner bounced. Consequently, F.I.R. was lodged.

6. The F.I.R. or the material, brought on the record, during investigation, does not reveal that there is any allegation of creation of a forged document or use of a forged document. Therefore, offences under Sections 467, 467 and 471 of the Penal Code are apparently not attracted in the facts and circumstances of



this case.

7. In the case of **S.K. Alagh V. State of Uttar Pradesh and Others** reported in **(2008) 5 SCC 662** and **R.Kalyani V. Janak C Mehta and Others** reported in **(2009)1 SCC 516**, the Hon'ble Apex Court held that vicarious liability can be fastened only by reason of a provision of a statute and not otherwise and for the said purpose, a legal fiction has to be created.

8. In the present case, the petitioner has been proceeded on the premise that he was vicariously liable for the affairs of the company. There is no allegation that draft was drawn in the name of the petitioner or the petitioner had signed the agreement on behalf of the company or the petitioner had issued the cheques which bounced. Hence, apparently, the offence of cheating is also not made out against the petitioner. Therefore, the criminal prosecution of the petitioner is apparently abuse of the process of the Court.

9. Accordingly, the impugned order as well as the entire criminal proceeding against the petitioner stands quashed and the application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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