

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18399 of 2014

Arising Out of PS.Case No. -257 Year- 2012 Thana -KOTWALI District- PATNA

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1. Sri Provos Kumar Roy @ Provos Roy @ Prabhatjee, son of late P.B. Roy, Hon. General Secretary of Rabindra Parishad, Rabindra Bhawan, Near A.G. Office, Birchand Patel Path, P.S- Kotwali, Distt and town at Patna.
 2. Sri Summant Sikdar @ Raja Babu, son of late H.R. Sikdar, Executive member of Rabindra Parishad, Ravindra Bhawan, near A.G. Office, Birchand Patel Path, P.S- Kotwali, District and town at Patna.
 3. Sri Sandip Kumar Roy @ Sandip Roy, son of Sri Mihir Kumar Roy, executive member of Rabindra Parishad, Rabindra Bhawan, near A.G. Office, Birchand Patel Path, P.S- Kotwali, District and Town at Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sri Shivram Krishna Gupta, son of late S.R. Gupta, owner of S.K. Krishna & Co., Situated at Fraser road, P.S- Kotwali, Distct and town at patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anjani Kumar Sharan, Advocate
Mr. Raj Kamal, Advocate.
Mr. Digvijay Narayan Singh, Advocate.
For the opposite party No. 2 : Mr. Abinash Kumar, Advocate.
For the State : Dr. Rabindra Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 13-11-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 11.04.2013 passed by the learned Chief Judicial Magistrate, Patna, in Kotwali P.S. Case No. 257 of 2012 (G.R. No. 2541 of 2012) by which the learned Magistrate has taken cognizance against the petitioners and another accused person for the offences under Sections 420 and 406 of the Indian Penal Code.



2. Heard learned counsel for the petitioners, learned counsel for the opposite party No. 2 and learned counsel for the State.

3. Learned counsel for the petitioners has submitted that these petitioners are General Secretary and Executive Member of Rabindra Bhawan. They have not entered into any contract with the informant. They have been falsely implicated in this case out of personal grudge since they have paid an amount of Rs. 10,75,000/- to one Hemant Kumar Das for supply of Generator Set but he did not supply the same and thereafter, the petitioner No. 1 (Sri Provos Kumar Roy @ Provos Roy @ Prabhat Ji) filed complaint case against Hemant Kumar Das vide complaint case No. 1474 (C) of 2011, in which, the learned Magistrate has after holding enquiry found *prima facie* case against accused Hemant Kumar Das and Prashant Kumar Jha for the offence under Sections 406 and 120(B) of the Indian Penal Code and Section 138 of Negotiable Instrument Act.

4. In the instant case, the informant alleged that in the month of February, 2011 the accused Hemant Das approached him to install 250 KVA Generator set on rent at the premises of Ravindra Bhawan, upon which he was called upon at the premises of Ravindra Bhawan where the accused Hemant Das, Sandeep Rai Prabhat Ji and Raja Babu were present and it was decided to pay monthly rent of Rs.40,000/- per month or Rs.3500/- per day, to which a written



agreement was also executed. Upon agreement executed between the parties, the informant on 12.2.2011 installed Alternator of Kirloskar Company and Engine (12 Cylinder) of MWM and other accessories at the premises of Ravindra Bhawan. It is further alleged that on 31.3.2011 when he raised a rental bill of Rs.56000/-, the same was not honoured by the accused Hemant Das. Thereafter, the informant sent his staff to bring back his D.G. Set from the premises of Ravindra Bhawan but the staff of Ravindra Bhawan did not allow him to take back his D.G. Set. Thereafter, he also sent a legal notice to the accused but neither the D.G. set was returned nor rental amount was paid to him.

5. Learned counsel for the petitioners has placed reliance on a case reported in *(2014) 10 SCC 663 (Binod Kumar and Others Vrs. The State of Bihar and Another)* wherein the Hon'ble Supreme Court has held that civil liability cannot be converted to criminal liability – abuse of process of court. He also relied upon judgment reported in *2017 (1) PLJR page 615 (Vijay L. Sonawane Vrs. The State of Bihar & Anr.)* wherein the Hon'ble High Court has held that there is no element of cheating or dishonest intention of the accused persons in retaining money in order to give wrongful loss to the complainant from very beginning – except bald allegation that accused did not make payment of dues to the complainant, there is no



allegation of dishonest intention in misappropriating the property – further, to make out case of criminal breach of trust, it is not sufficient to show that amount was retained by the accused, but must also be shown that accused dishonestly disposed of the same or dishonestly retained it – mere fact that accused persons did not pay the money to complainant does not amount to criminal breach of trust.

6. Learned counsel for the petitioners has argued after referring to the aforesaid Judgments that Criminal Proceeding cannot be a short-cut of other remedies.

7. In the instant case from the allegation in the written report itself it appears that no agreement was entered into by the informant with these petitioners. There is no allegation in the written report that these petitioners have intention of cheating or dishonestly misappropriating the amount of the informant. The act of withholding payment to the informant as per own averments made by the informant in the written report is against Hemant Kumar Das and not against these petitioners. There was no dishonest intention on the part of these petitioners for misappropriating the amount in question.

8. This Court on the basis of material available on record finds that there are no essential ingredients for the offence of criminal breach of trust and cheating against these petitioners.

9. Therefore, the impugned order dated 11.04.2013



passed by the learned Chief Judicial Magistrate, Patna, in Kotwali P.S. Case No. 257 of 2012 (G.R. No. 2541 of 2012) taking cognizance against these petitioners along with the entire criminal proceeding is hereby quashed.

10. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	06/12/2017
Transmission Date	06/12/2017

