

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36189 of 2014

Arising Out of PS.Case No. -2290 Year- 2010 Thana -PATNA COMPLAINT CASE District-
PATNA

=====

1. Subodh Kumar son of Sri Haridwar Singh , Resident of village - Badgaon ,
P.O. and P.S. Fathepur, District - Gaya .

.... Petitioner/s

Versus

1. The State of Bihar.
2. Bajrang Bali Sharma (B.B. Sharma) son of Vijay Sharma , Resident of
village - Balipakar , P.S. Paliganj , District- Patna , At present residing at 201,
Aranya Balbhedra Apartment , Budha Colony , Boring Road, near B.S.P.O.
Office , Police Station - Budha Colony , District - Patna .

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Binod Kumar
For the O.P. No. 2 : Mr. Binod Kumar
For the Opposite Party/s : Mr. M. Haque, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 28-08-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 06.12.2010 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 2290 (c) of 2010 whereby and whereunder the learned Magistrate finding prima facie case for the offence under Section 420 of the Indian Penal Code and Section 138 of the N.I. Act summoned the petitioner.

2. Heard both sides.

3. The learned counsel for the petitioner submits that the learned Magistrate has passed the impugned order in mechanical manner without applying judicial mind. The Opposite Party No. 2



and his associates had intercepted the petitioner and forcibly obtained his signatures on two cheques each for an amount of Rs. 82,500/- and deposited the same in bank for clearance. They also got the signature of the petitioner on a stamped paper. The petitioner immediately informed the bank to stop the payment against the said cheques, which were fraudulently obtained by the complainant under threat and coercion. Since the cheques were not voluntarily issued by the petitioner, no offence under Section 138 of the N.I. Act or Section 420 of the Indian Penal Code is made out. The complainant filed a Complaint Case No. 1034 of 2010 on the file of C.J.M., Gaya immediately after the said occurrence. The complainant deposited the said cheques in bank, which on account of instruction of the petitioner was dishonoured. The Opposite Party No. 2 was not entitled to any amount on the basis of aforesaid cheques and so, the order taking cognizance is bad and is fit to be quashed.

4. The learned APP for the State as well as the learned counsel for the Opposite Party No. 2 opposed the submissions.

5. On perusal of complaint petition as well as the annexures on record, I find that there is specific allegation that this petitioner had taken four trucks on different occasion for his contract business at the agreed rent of Rs. 1,20,000/- per month. The petitioner did not pay the rent and on repeated demand, the matter was settled and an amount of Rs. 1,65,000/- was found due against the petitioner for



which the petitioner executed an agreement and issued two cheques for an amount of Rs. 82,500/- each. The said cheques were deposited in bank, which was dishonoured on account of the petitioner to stop the payment. In course of enquiry, the complainant (Opposite Party No. 2) and his witnesses supported the allegation and the learned Magistrate finding prima facie case for the offence under Section 420 of the Indian Penal Code and Section 138 of the N.I. Act has rightly taken cognizance against the petitioner. The allegation of petitioner that the cheques were issued under threat of the Opposite Party No. 2 and that a criminal case is pending with respect to the said offence cannot be taken into consideration at the stage of taking cognizance. The petitioner will have liberty to raise such points at subsequent stage. In this view of the matter, I do not find any illegality in the impugned order requiring any interference under inherent jurisdiction of this Court.

6. In the facts stated above, I find that this application is devoid of merit and is, accordingly, dismissed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2017
Transmission Date	30.08.2017

