

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33298 of 2012

Arising Out of PS.Case No. -667 Year- 2011 Thana -Korha District- KATIHAR

=====

Bijay Singhania @ Bijay Kumar Singhania Son Of Late Baghmal Singhania
Resident Of Mohalla - Bania Tola, Katihar, P.S. - Katihar, District - Katihar

.... Petitioner

Versus

1. The State Of Bihar
2. Jag Jeevan Prasad Chaurasia Son Of Ghuttan Mandal Resident Of Village - Maheshpur, P.S. - Korha, District - Katihar

.... Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Bhola Prasad, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 05-05-2017

Heard the learned counsel for the petitioner and the learned APP for the State.

2. The petitioner seeks quashing of the order dated 22.11.2011 passed by Sri A. Shamim, Judicial Magistrate, 1st Class, Katihar in Complaint Case No. CA 667 of 2011 whereunder the Magistrate finding prima facie case for the offence under Sections 406 and 418 of the Indian Penal Code ordered for issuance of summons against the petitioner and one more accused.

3. The facts in brief is that the Opposite Party No. 2 (Complainant) filed a complaint case No. C.A. 1274 of 2008 on the file of C.J.M. , Katihar alleging that an agricultural loan for an



amount of Rs. 3,000,00/- was sanctioned by Allahabad Bank in favour of his father for purchasing a Tractor, Tractor and Cultivator. The petitioner being a dealer of Sonalika Tractor supplied a tractor to the lonee, but necessary documents relating to the Tractor were not given. The complainant gave repeated request and also made a complaint to the Branch Manager, but no action was taken by them. A pleader notice was also given to the Bank to take action. The father of the complainant approached the petitioner, who insisted for payment of extra money amounting to Rs. 20,000/-. The said amount was not paid to the Bank in consequence of which the dealer did not supply Tractor and Cultivator. The complainant, in compelling circumstance, filed the present complaint case. In course of enquiry, the complainant and his witnesses were examined. The Magistrate considering the statement of the complainant on S.A. and other witnesses took cognizance of offence and ordered for issuance of summons as per impugned order.

4. The counsel for the petitioner submits that the petitioner is an authorized dealer of Sonalika Tractor. He had given quotation only for the Tractor and Cultivator for total amount of Rs. 3,34,991/-. The petitioner after receipt of demand draft delivered the Tractor and all the relevant documents to the purchaser and in



token of receiving the Tractor and papers, the father of the complainant granted receipt under his signature / thumb impression. The complainant has produced those documents in course of enquiry itself. So far delivery of trailer is concerned, the petitioner had no concern as the quotation of trailer was submitted by Maa Steel Industries, Purnea. The said Trailer was to be supplied on payment of demand draft by the said supplier. The said complaint was sent to police station which was registered as Katihar Town P.S. Case No. 155 of 2008. After investigation, police found the case untrue and recommended for launching a proceeding against the Opposite Party No. 2 (Complainant) for the offence under Sections 182 and 211 of the Indian Penal Code. It was also submitted that the Opposite Party No. 2 (Complainant) has filed a complaint bearing Complaint Case No. 77 of 2009 before the District Consumer Forum, Katihar, which is pending for disposal. The dispute between the parties is purely civil dispute requiring determination and adjudication of dispute. The learned lawyer in the aforesaid background has submitted that the proceeding is bad and illegal in the eyes of law and is fit to be set aside.

5. The learned APP, on the other hand, opposed the submission.



6. On perusal of record, I find that the case was admitted for hearing on 04.12.2014. The Opposite Party No. 2 was noticed under registered post with A/D as well as by ordinary process. The Opposite Party No. 2 appeared in this case, but did not file any counter affidavit denying the version of the petitioner. The matter was investigated by police, but they submitted final form as no clue. It further appears that the Opposite Party No. 2 has already filed a case before the District Consumer Forum, Katihar under the provision of the Consumer Protection Act. The materials available on record do not attract any penal provision or any criminal liability against the petitioner. The impugned order, if allowed to remain in force it would amount to misuse of process of court.
7. Considering the aforesaid facts as discussed above, the impugned order is set aside and the application is allowed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.05.2017
Transmission Date	09.05.2017

