

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40451 of 2013

Arising Out of PS.Case No. -2743 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Md. Umar Khan Son Of Late Qamrul Khan R/O Mohalla-Belbanwa, P.S.-
Motihari Town, District-East Champaran At Motihari.... Petitioner

Versus

The State Of Bihar Opposite Party

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Appearance :

For the Petitioner/s : Mr. Madhu Prasun

For the Opposite State : Mr. Matlob Rab, APP-34

For the Opposite Party No. 2:- Mr. Aditya Prakash Sahay, Advocate

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN
SHARMA**

ORAL ORDER

6 04-04-2017 Heard learned counsel for the petitioner, learned counsel
for opposite party no. 2 and learned APP representing the State.

This Criminal Miscellaneous application has been filed
for quashing the order dated 12.10.2012 passed by Sri
Ghanshaym Singh, the then Judicial Magistrate Ist Class, Patna in
Complaint Case No. 2743 (C) of 2012 whereby and whereunder
cognizance has been taken under Sections 323, 341, 380, 452 and
384 of the of the Indian Penal Code.

On behalf of the petitioner it is submitted that this
complaint case has been filed with wrong allegation. Earlier the
complainant has filed Supaul P.S. Case No. 243 of 2010 wherein
the Police after completing investigation submitted final form and
thereafter, this case has been filed only with a view to harass the
petitioner. The petitioner is paying income tax more than Rs. 4



lakhs to the government annually and deals in supply of construction machinery, vehicles on lease to construction companies and as such it is not believable that the petitioner was working as *Mushi* in the company where the complainant was working as Additional Director. As a matter of fact the company of the complainant had taken on lease one JCB, Poclaine Machine, Hywa ten wheeler on certain terms and conditions but with fraudulent intent had not paid Rs. 19,15,170/- to the petitioner and the cheques given by the company have also been dishonoured and for that the petitioner has instituted Motihari Town P.S. Case No. 11 of 2010 against the complainant and one Manoj Kumar Singh wherein after completing investigation chargesheet was submitted and cognizance has also been taken and only in retaliation this false case has been filed.

On behalf of the State and O.P. No. 2 it is submitted that at the time of taking cognizance the defence of the accused persons cannot be looked into rather it can be adjudged at the later stage. The petitioner will be given liberty to raise all these things after his appearance in this case and as such there is no illegality, impropriety or incorrectness in the impugned order and the same does not require any interference by this Court.

Perused the complaint petition, statement of the



complainant on solemn affirmation and the statement of inquiry witness Bajrang Bhandari.

After perusal of those materials collected during inquiry it reveals that prima facie case is made out under Sections 323, 323, 341, 452, 380, 384 of the Indian Penal Code against the accused Md. Umar Khan the petitioner of this criminal miscellaneous. At this stage the court is required to see as to whether on the basis of materials collected during inquiry, prima facie case is made out or not and the defence cannot be looked into. The learned Judicial Magistrate after perusal of the complaint petition, S.A. of complainant and statement of inquiry witness and documents filed on behalf of the complainant found prima facie case to be made out under the aforesaid sections against the accused petitioner and as such there being no illegality, incorrectness or impropriety, the impugned order does not warrant any interference of this Court.

In the result, finding no merit in this criminal miscellaneous application, the same is hereby dismissed.

(Jitendra Mohan Sharma, J)

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