

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46953 of 2013

Arising Out of PS.Case No. -1022 Year- 2010 Thana -PATNA COMPLAINT CASE
District- PATNA

- =====
1. Abhay Kumar Son Of Sri Yadubansh Pathak R/O 4m/45, M.I.G., Bahadurpur Housing Colony, P.S.-Agamkuan, Distt-Patna
 2. Smt Puja Tripathi D/O Late Saryug Prasad Tripathi R/O 4m/45, M.I.G., Bahadurpur Housing Colony, P.S.-Agamkuan, Distt-Patna

.... Petitioners

Versus

1. The State Of Bihar
2. Ramesh Prasad Singh Son Of Ramaswarath Singh R/O At - Paschim Darwaza, Near Oriental College, P.S.-Khazekala, Distt-Patna

.... Opposite Party

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Appearance :

For the Petitioners : Mr. Pawan Kumar, Advocate
For the O.P. No.2 : None.
For the State : None.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 04-08-2017

Heard learned counsel for the petitioners.

No one appears on behalf of the opposite party no. 2.

As usual, State is also not represented.

The petitioners, in the present case, are seeking quashing of the entire criminal proceeding including the order dated 03.09.2010 passed in Complaint Case No. 1022(C) of 2010 by learned Judicial Magistrate, 1st Class, Patna, whereby the learned Judicial Magistrate has taken cognizance of the offences under Sections 406, 120(B) of the Indian Penal



Code read with Section 138 of the Negotiable Instrument Act.

A perusal of the complaint petition would show that, according to the complainant, he had given a sum of Rs. 10,00,000/- (Rs. Ten lacs) to the accused persons on the assurance that the complainant will get franchise company shares within a period of 2 to 3 months. However, the accused persons did not provide that franchise shares and when the complainant demanded his money a cheque bearing no. 565019 dated 19.02.2010 drawn on State Bank of India, Netaji Subhash Place, New Delhi Branch in the name of the complainant was handed over to him. It is the claim of the complainant that the said cheque stood dishonored on the presentation on the ground that the signature of the drawer differs. Thereafter, a legal notice is said to have been issued to the accused on 20.03.2010 which was not replied, thereafter he filed the present complaint case against the accused persons, in which cognizance, under Section 406 I.P.C. read with Section 138 of the Negotiable Instrument Act, has been taken by the learned Judicial Magistrate, 1st Class, Patna and summons have been issued to the present petitioners.



Learned counsel for the petitioners submitted that from the allegation made in the complaint petition no offence under Section 406 I.P.C. is made out, because the money was given to him, even if assumes to have been given by way of entrustment, it was for business purposes. It is further submitted by learned counsel for the petitioners that petitioner no. 1 lost his bag containing the cheque sometimes back and a *sanha* in this regard was also recorded with a police station, it is one of those cheques which has been used by the complainant by forging signature of the petitioner no. 1. He would further submit that admittedly there is no agreement suggesting any business to be carried on between the complainant and the accused persons.

Having heard learned counsel for the petitioners and upon perusal of the record, this Court finds that the submission of the learned counsel for the petitioners are in the nature of a defence to rebut the presumption of law as contained in Section 139 of the Negotiable Instrument Act. Whether the cheque contains a forged signature or that it was got misutilized by the complainant are the pure questions



of facts which can be gone into only by a fact finding court. In the present case, it will be the trial court. This Court, sitting in its jurisdiction under Section 482 Cr.P.C., cannot assume the rule of a fact finding court and shall not examine the merit of the allegations. The petitioners can, if so advised, take all such steps in accordance with law, which are available to them at the time of framing of charge.

This application stands dismissed in the present circumstances.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
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