

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.1310 of 2017**

Arising Out of PS.Case No. -172 Year- 2017 Thana -Mithanpura District- MUZAFFARPUR

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Smt. Baby Devi, W/o Sri Niranjana Kumar Singh, Resident of Village- Dewarhi, P.S.- Taraiya, District- Saran at Chapra, Presently resident of House No.38, Dhakanpura, Magadh Bihar Colony, Beside State Bank of India, P.S.- Gardanibagh, District- Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Senior Superintendent of Police, Muzaffarpur, Bihar.
4. The Deputy Superintendent of Police, Town, District- Muzaffarpur, Bihar.
5. The Station House Officer, Mithanpura Police Station, District- Muzaffarpur, Bihar.
6. The Investigating Officer, Mithanpura Police Station, District- Muzaffarpur, Bihar.
7. Sri Shashi Ranjan, son of Sri Dinanath Singh, Resident of Indrapuri Colony, Road No.2, P.S.- Mithanpura, District- Muzaffarpur.

.... .... Respondent/s

with

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**Criminal Writ Jurisdiction Case No. 1639 of 2017**

Arising Out of PS.Case No. -172 Year- 2017 Thana -Mithanpura District- MUZAFFARPUR

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Niranjana Kumar Singh, Son of Saryug Prasad Singh, Resident of Village- Dewarhi, P.S.- Taraiya, District- Saran at Chapra, Presently resident of House No.38, Dhakanpura, Magadh Bihar Colony, Beside State Bank of India, P.S.- Gardanibagh, District- Patna.

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Versus

1. The State of Bihar, Through The Principal Secretary , Department of Home, Government of Bihar , Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Senior Superintendent of Police, Muzaffarpur, Bihar.
4. The Deputy Senior Superintendent of Police, Town, Muzaffarpur, Bihar.
5. The Station House Officer, Mithanpura Police Station, District- Muzaffarpur, Bihar.
6. The Investigating Officer, Mithanpura Police Station, District- Muzaffarpur, Bihar.
7. Sri Shashi Ranjan, Son of Sri Dinanath Singh, Resident of Indrapuri Colony, Road No.2, P.S.- Mithanpura, District- Muzaffarpur.

.... .... Respondent/s



**Appearance :**

(In Cr. WJC No.1310 of 2017)

For the Petitioner/s : Mr. Jeetendra Narayan  
Mr. Sandeep Kumar, Adv.  
For the Respondent/s : Mr. Utsav Kumar, AC to GA-4  
For respondent no. 7 : Mr. Arun Kumar Rai, Adv.  
(In Cr. WJC No.1639 of 2017)

For the Petitioner/s : Mr. Mr. Jeetendra Narayan  
Mr. Sandeep Kumar, Adv.

For the Respondent/s : Mr. Nasrul Huda Khan  
For respondent no. 7 : Mr. Arun Kumar Rai, Adv.

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**

**ORAL JUDGMENT**

**Date: 20-11-2017**

Heard the parties.

2. Petitioner Baby Devi is wife of petitioner Niranjan Kumar Singh. Both the petitioners are accused in connection with Mithanpura P.S. Case No. 172/2017 registered under Sections 205, 406, 420, 467, 468, 471, 120(B) and 34 of the Indian Penal Code on the basis of initial Complaint Case No. 920/2017 filed by respondent no. 7 Shashi Ranjan in the court of learned Chief Judicial Magistrate, Muzaffarpur.

3. Petitioners have sought for quashing of the F.I.R. in exercise of this extra ordinary jurisdiction on the ground that a bare perusal of the complaint petition would reveal that ingredients of none of the offences for which F.I.R. has been registered are disclosed. Further submission is that the F.I.R. would further reveal that the matter is of purely civil dispute and in no circumstance a case of criminal liability is made out. Moreover, the F.I.R. has been registered



in utter violation of the requirement of section 154(3) or section 156(3) of the Code of Criminal Procedure as well as Judgment of the Hon'ble Apex Court in **Priyanka Srivastava's case reported in A.I.R. 2015 SC 1758 corresponding to 2015 3 P.L.J.R. (SC 78).**

4. Learned counsel for the respondents especially respondent no. 7 opposed the prayer by filing detailed counter affidavit and supplementary counter affidavit on the ground that entire money of more than Rs. 64 lacs was paid by the informant in the bank account of the petitioners fully detailed in the counter affidavit. The money was mis-utilized for personal purposes by the petitioners in payment of loan, purchase of L.I.C. policy in the name of children and other expenses and not for business purpose for which money was given by the informant. Further contention is that the petitioners have got criminal antecedent of identical nature which are evident from the complaint cases lodged by different persons against the petitioners and fully detailed in the counter affidavit. Submission is that a bare perusal of the complaint petition would reveal that ingredients of offences as alleged are prima facie made out, therefore, the petitioners deserve no relief from this court. This court had considered the application of the Judgment of **Priyanka Srivastava's case in the case of Farah Ali Khan vs. State of Bihar reported in 2017(4) P.L.J.R. page 47** and in paragraph 11 of the Judgment recorded as follows:-



*On consideration of the precedent on the line, the Hon'ble Apex Court in paragraphs 24 to 27 of the Judgment in Priyanka Srivastava case (supra observed) as follows:-*

*“24. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order.”*

*“25. Issuing a direction stating “as per the application” to lodge an F.I.R. creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants to take adventurous steps with courts to bring the financial institutions on their knees.”*

*“26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.”*

*“27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as it somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate*



*under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the F.I.R.”*

5. The record of the present case would reveal that the initiation of complaint petition is not on affidavit nor there is averment that the respondent no. 7 had approached the police for institution of a police case or had send the complaint to the superior police officer in pursuance of the requirement of provision of Section 154(3) Cr.P.C. against non-institution of the F.I.R.. The learned Sub-Divisional Judicial Magistrate, Muzaffarpur while sending the matter for institution of the police case in exercise of power under Section 156(3) Cr.P.C. simply recorded as follows:-

**“lh- 920@17 dk ifjokn i= /kkjk 156 n0  
iz0 l0 ds vUrxZr izkFkfedh ntZ dj vuqla/kku  
djus gsrq Hkstk tkrk gSA”**

6. Apparently, the impugned orders suffers from non-application of judicial mind as to whether the complaint petition discloses any offence or there is statutory compliance of the requirement before directing institution of an F.I.R. under Section 156(3) Cr.P.C.



7. Hence, in my view there is complete non-compliance of the mandate of law as well as the judgment of the Hon'ble Apex Court in Priyanka Srivastava's case aforesaid. Therefore, registration of police case is fit to be quashed on this ground alone.

8. Now, the point for consideration is whether the complaint petition discloses the offences alleged to allow the criminal prosecution of the petitioner to go on, even on the basis of complaint petition before the competent court.

9. The prosecution case, as disclosed in the complaint petition is that the complainant was posted as Chief Officer in the Merchant Navy. His wife and uncle were already engaged in some business known as Kanchanjanga Food Products Pvt. Ltd. The complainant was a shareholder in a Rice Mill business being run by his wife and uncle. During training of the complainant, petitioner Niranjan Kumar Singh introduced himself as Captain of Merchant Navy and involvement in different businesses. Niranjan Kumar Singh further informed that he has also a rice mill at Vaishali and supplies different articles to the Health Department of the Government of Bihar, in the name of his firm Swastik enterprises. The petitioner persuaded and the complainant agreed to become business partner of the petitioner and on inducement of the petitioners, the complainant provided Rs. 64,15,000/- in the bank account of the petitioners. The complainant continued persuading the petitioners to execute an



agreement and induct the complainant as business partner in the partnership deed. However, the petitioners evaded on the pretext of busy engagement in supply of goods to different customers. Ultimately, on 24.04.2017 on a stamp paper of Rs. 1,000/- the petitioners assured to induct the complainant a business partner in Swastik Enterprises and to refund the money. Later on, the complainant came to know that the petitioners have no business concern. They have no Swastik Enterprises firm, they are not dealing with the Health Department, Government of Bihar. All these informations were gathered by the complainant under the Right to Information Act. The informant further gathered that the money provided by the informant was spent on different heads which was meant for personal purposes of the petitioners and were never used for business purposes.

10. Contention of the petitioners is that in fact there was business dispute between two partners and dispute of accounting. The petitioners had refunded Rs. 28,65,000/- to the complainant in cash and Rs. 14,00,000/- through account transfer. The account transfer would be clear from the bank statement of the account of petitioner Niranjan Kumar Singh at Annexure-2 series and bank deposit of Rs. Ten lacks in cash in the account of Shashi Ranjan the complainant through receipt at page 86 of the brief. Though, aforesaid payment has been disputed by the learned counsel for the complainant. However,



he admits that Rs. 11,20,000/- only has been refunded up till now and some of the portion of that were refunded after lodging of the case. Submission of the petitioners is that the conduct of the petitioners aforesaid in refunding money to the complainant does not reveal the ingredients of mens rea to constitute the offence of criminal breach of trust as held by the Hon'ble Apex Court in **S.W. Palanitkar And Ors vs. State of Bihar And Anr. reported in 2002 Vol.1 SCC 241.**

11. Learned counsel for the petitioners submits that a meticulous perusal of entire complaint petition would reveal that the case of the complainant was not of entrustment of property to the petitioners rather investment in the business to get profit. Therefore, offence of criminal breach of trust is not made out.

12. He further submits that offences under Section 205 of the Indian Penal Code is also not made out, apparently because there is no allegation that false personation was made by the petitioners for the purpose of any act or proceeding in suit or prosecution.

13. I find substance in the aforesaid submission. A perusal of section 205 of the Indian Penal Code would reveal that the false personation should be for the purpose of act or prosecution in a proceeding before the court of law. In the present case there is no such allegation. The F.I.R. does not reveal that there is allegation of entrustment of property to the petitioners because entrustment implies domain of the person over entrusted property. In the present case the



complainant provided money to the petitioners to be invested in the business which was in fact not done by the petitioners allegedly.

14. Similarly, offences under Sections 467, 468 and 471 of the Indian Penal Code are not disclosed in the F.I.R. because there is no allegation of commission of forgery or making a false document or use of any forged document as a genuine one.

15. In the complaint petition there is no allegation of prior meeting of mind of two petitioners to do some criminal act. Hence, offence under Section 34 of the Indian Penal Code is not attracted.

16. No offence of criminal conspiracy is alleged in the complaint petition. Section 120A of the Indian Penal Code defines criminal conspiracy which reads as follows:

***“120-A. Definition of criminal conspiracy.-***

*When two or more persons agree to do, or cause to be done, -*

*(1) an illegal act, or*

*(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*

*Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.”*



17. There is no averment in the complaint petition that the two petitioners agreed to do any illegal act nor there is any averment that some criminal act in pursuance of the agreement was done by the petitioners. Therefore, offence under Section 120B Of the Indian Penal Code is also not made out.

18. To establish the offence under Section 420 Of the Indian Penal Code, it must be disclosed in the F.I.R. that at the time of initial transaction the petitioners had dishonest or fraudulent intention.

The offence of cheating is defined under Section 415 of the Indian Penal Code, which is being reproduced as under:

**“415. Cheating.**-Whoever, by *deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”. ”*

19. In **Hridaya Ranjan Prasad Verma & Others V. State of Bihar & Others** reported in **2000 (3) PLJR (SC) 137**, the Hon’ble Supreme Court highlighting the importance of the intention of the accused at the time of inducement for attracting the offence of



cheating observed as follows:

*“In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”*

Again in Uma Shankar Gopalika vs. State of Bihar & Another reported in (2005) 10 SCC 336, the Supreme Court held as follows:

*“It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If*



*the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 of the Indian Penal Code”*

20. In my view there is complete lack of disclosure of the offence of cheating in the complaint petition.

21. To conclude, the facts of the case as disclosed in the F.I.R. would reveal that ingredients of none of the offences are disclosed in the F.I.R. Hence, I hold that the F.I.R. discloses no offence. It is further clear that the differences between the parties arose out of a contractual dispute arising due to non-use of the business money for the business purpose by the petitioners. The F.I.R. is bad in law as it was registered without ensuring compliance of the requirement of Section 154(3) Cr.P.C. and the judicial order passed by the learned Magistrate in exercise of power under Section 156(3) Cr.P.C. suffers from non-application of judicial mind. Therefore, entire F.I.R. is fit to be quashed. Though the civil remedy is no bar in criminal prosecution if the same set of facts discloses commission of criminal offences. However, the present case, as discussed above, does not disclose the ingredient of criminal offences. Therefore, apparently the whole criminal prosecution would amount



to abuse of the process of the Court.

22. I do not find any substance in the submission of learned counsel for the respondent that only for the reason that the petitioners are carrying criminal antecedent they should be prosecuted in a case wherein no offence is disclosed. Further, each and every advancement of money and non-refund of the same does not necessarily attract the criminal intent of the petitioners.

23. In the result, the referred F.I.R. and the subsequent criminal proceeding arising out of that case stands quashed and this application allowed.

**(Birendra Kumar, J)**

Vinita/-

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