

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12239 of 2014

Arising out of P.S. Case No.2967 Year 2012 Thana PATNA COMPLAINT CASE District
Patna

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1. Praveen Kumar Wadera, S/o Keshav Chandra Wadera
 2. Gulshan Wadera, W/o Praveen Kumar Wadera, Both R/o 566A, Sector 46, Faridabad, P.S.- Surajkund, District- Faridabad, (Haryana)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Jasprit Singh, S/o Sri Jasbir Singh, R/o Plot No. 202, Gauri Shankar Complex, Lohiyanagar, Kankarbagh, P.S.- Kankarbagh, District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioners	:	Mr. Krishna Prasad Singh, Senior Advocate Mr. Manindra Kishore Singh, Advocate
For the State	:	Mr. Mayanand Jha, APP
For O.P. No.2	:	Mr. Uma Shankar Prasad, Senior Advocate Mr. Kamala Kant Singh, Advocate Mr. Kamala Kant Tiwary, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 06-04-2018

Heard learned counsel for the petitioners, learned APP for the State as well as learned counsel appearing on behalf of opposite party no.2.

2. The petitioners seek quashing of the order of cognizance dated 04.04.2013, passed by learned Judicial Magistrate, 1st Class, Patna in Complaint Case No.2967 (C) of 2012 thereby taking cognizance of the offence under Section 406 of the Indian Penal Code as well as under Section 138 of the NI Act.



3. A brief fact giving rise to the case is that the accused persons proposed to the complainant to purchase a flat situated on the ground floor at Lajpatnagar in New Delhi. The complainant expressed his desire to purchase and in consequence total consideration money was settled to the tune of Rs.75 lakhs and made payment of Rs.50 lakhs remaining amount was agreed to be handed over after execution of the sale deed, which was scheduled to be executed in the month of February, 2012 but the accused persons refused to execute the sale deed unless Rs. 1 crore is paid as consideration money. The complainant refused to pay Rs.1 crore and asked to return back his money paid in advance. Pursuant to that Gulshan Wadera, petitioner no.2 issued a cheque of Rs.50 lakhs on 28.03.2012 but the cheque got bounced when presented by the complainant in the bank. Thereafter despite issuance of notice no payment was made.

4. Submission of the learned senior counsel appearing on behalf of the petitioners is two fold, firstly, there is no written agreement in between both sides, so without written agreement making payment of Rs.50 lakhs, is improbable and absurd, secondly, a blank signed cheque of the petitioner no.2 was stolen by the enquiry witness no.1 of this case, a distant relative of the complainant who was employee in the petitioners' firm for which the petitioners have launched criminal prosecution in the criminal court



in Delhi and that matter is also sub-judice; whereas learned senior counsel appearing on behalf of the complainant submits that the cheque was issued to the complainant by petitioner no.2 as he refused to execute the sale deed unless Rs.1 crore is paid, so the allegations do constitute *prima facie* offence under Section 406 IPC and 138 NI Act and defence of the petitioners that the said signed and blank cheque was stolen by one of his employees and used by the complainant such disputed fact cannot be considered at this stage and the learned counsel has placed reliance to a decision reported in (2015) 11 SCC 776 (*HMT Watches Ltd v. M.A. Abida*) wherein the Apex Court has held that disputed question of facts cannot be considered at the stage of quashing criminal proceeding and in that connection referred paragraph-10 of the judgment, which reads as follows:

“10. Having heard the learned counsel for the parties, we are of the view that the accused (Respondent 1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the



Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplied with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.”

Further learned counsel for the opposite party no.2 placed reliance to a decision reported in *AIR 2016 SC 4363 (Sampelly Satyanarayana Rao v. Indian Renewable Energy Dvpt. Agency Ltd.)* wherein it is held that it is well settled that while dealing with the quashing petition, the court has ordinarily to proceed on the basis of averments in the complaint and the defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.

5. Having considered rival submissions of the parties and on perusal of the records, the Court finds substance in the submissions of learned senior counsel for opposite party no.2. The



allegations against petitioners made in the complaint do disclose *prima facie* offence against the petitioners under Sections 406 of the Indian Penal Code as well as under Section 138 of the NI Act. At this stage, it cannot be held that the case of the complainant is improbable or patently absurd. Moreover the decisions relied upon by the opposite party no.2 squarely covers the present case too. The disputed question of fact that whether the cheque was issued in the transaction of the present case in connection with sale and purchase of the flat by the petitioners or it was stolen by his employee can only be adjudicated in trial by a criminal court reaching to a conclusive finding, however no ground is available at this stage for interfering with the impugned order of cognizance dated 04.04.2013, passed by learned Judicial Magistrate, 1st Class, Patna in Complaint Case No.2967 (C) of 2012 and for quashing the subsequent criminal proceeding.

6. The quashing application stands dismissed.

(Arun Kumar, J)

S.KUMAR/-

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