

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4819 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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1. Shankar Kumar @ Shankar Singh, s/o Sri Bangali Singh,
 2. Smt. Neelu Devi, w/o Sri Shankar Kumar Singh, both resident of mohalla- J/189, P.C. Colony, P.S.- Kankarbagh, P.O.- Lohiya Nagar, District- Patna
- Petitioner/s

Versus

1. The State of Bihar,
 2. Arun Kumar, s/o Sri Rajnandan Singh, resident of mohalla- East Indira Nagar, Road No.- 1(A), P.S.- Kankarbagh, District- Patna
 3. Ras Bihari Gope @ Raj Bihari Gope, son of late Ram Sewak Gope, resident of village + PO-Sabbalpur, P.S.-Didarganj, District- Patna.
- Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar, Advocate

For the Opposite Party/s : Mr. APP

Mr. Ashutosh Singh II, Advocate

Mr. Shailendra Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 23-02-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 06.09.2011 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.2023-C of 2011 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 420 Indian Penal Code and Section 138 of the Negotiable Instruments Act.

2. Case of the Complainant is that Complainant was authorized by Ras Bihari Gope @ Raj Bihari Gope, son of late Ram



Sevak Gope, to dispose off the land bearing Tauzi no.167, Thana no.24, Khata no.29, Plot No.176 (part) measuring 10.5 Kattha located at Mauza Changar, which he got through judgment and decree passed in Title Partition Suit No.119 of 1962. The petitioners approached the Complainant on 23.07.2010 for its purchase and it was finalized for consideration amount of Rs.1,95,87,750/-. After agreement petitioner no.1 handed over Rs.76,00,000/- in cash and petitioner no.2 issued Cheques in the name of Complainant as well as in favour of Ras Bihar Gope (Opposite Party No.3). The petitioners assured the Complainant that after execution of sale deed all the cheque will be honoured on its presentation for encashment. Two absolute sale deeds were executed on 30.07.2010 in favour of the petitioners and two cheque of rupees ten lac each were presented for encashment which were honoured. Thereafter, three cheques were presented on different dates as mentioned in the Complaint Petition, but the same were dishonoured with endorsement 'insufficient fund'. Legal notice was sent to the petitioners for making payment, but the petitioners refused to pay.

3. Counsel for the Opposite Party No.2 has appeared and submitted that cheques were issued by petitioner no.2 in favour of the Complainant as mentioned in the Complaint Petition with assurance that after execution of sale deed the cheques will be



honoured on its presentation. Absolute sale deed was executed on 30.07.2010 in favour of the petitioner nos.1 and 2 and it was again assured that the cheques, which have been given to the Complainant against the cost of the land, will be honoured. The Complainant presented two cheques bearing no.224817 dated 20.10.10 and cheque no. 224818 dated 20.11.2010 for rupees ten lac each which were duly honoured. Remaining cheques as mentioned in para 7 and 8 of the Complaint Petition were dishonoured with endorsement “fund insufficient” on presentation by the Complainant.

4. Counsel for the petitioners has relied on the judgment of the Hon’ble Supreme Court in the case of *Yogendra Pratap Singh Vs. Savitri Pandey* reported in (2014)10 SCC 713, wherein, Hon’ble Supreme Court has held that no complaint can be maintained against drawer of the cheque before expiry of sixty days from receipt of the notice under Section 138-C of the Negotiable Instruments Act because drawer accused cannot be said to have committed any offence until then nor is there any accrual of cause of action for filing of complaint under Section 138 of the Negotiable Instruments Act until then any complaint filed before expiry of the said fifteen days is *non est*.

5. In the instant case, from the impugned order, it appears that the Court below besides offence under Section 138 of



the Negotiable Instruments Act has also found *prima facie* case against the petitioners for the offence under Section(s) 420 Indian Penal Code.

6. In the complaint, there is specific allegation that petitioner no.2 issued cheques in the name of the Complainant with assurance that after execution of the sale deed all the cheques will be encashed. Absolute sale deed was executed in favour of the petitioners on 30.07.2010 and after execution of the sale deed when cheques were produced by the Complainant then only two cheques were honoured and other cheques were disonoured with endorsement 'in sufficient fund'.

7. During hearing of this application, Opposite Party No.3 has appeared and filed Counter Affidavit. Opposite Party No.3 has levelled allegation against the petitioners that they have not paid the consideration money to Opposite Party No.3 after execution of the sale deed. They have paid only Rs.85,000/- in cash. Three cheques for Rs.50,00,000/- given by the petitioners to the Opposite Party No.3 have forcibly been taken away from him. Opposite Party No.3 has further stated in the Counter Affidavit that these petitioners have also cheated his two brothers by getting two sale deeds executed from them on 26.11.2010 without making payment to them for which they have filed Complaint Petition before the Chief



Judicial Magistrate, Patna, vide Complaint Case No.3402-C of 2010. Opposite Party No.3 has further submitted that these petitioners have captured his 11 *Katthas* costly land and have made payment of only Rs.85,000/- and when he made demand of the remaining amount of the consideration money then they gave threat of dire consequences.

8. In this manner, the Complainant has made specific allegation against the petitioners of issuing cheques in his favour with promise that after execution of sale deed in their favour, those cheques will be honoured on presentation by the Complainant, out of which only two cheques were honoured and other cheques, as mentioned in the Complaint Petition, were dishonoured with endorsement 'insufficient fund'.

9. Counter Affidavit has been filed on behalf of the Opposite Party No.3 levelling allegation against the petitioners of cheating him as well as his brothers also. The petitioners have denied all these statements in the rejoinder filed on their behalf.

10. Learned Magistrate is only required to see *prima facie* case at the time of holding enquiry on the basis of allegation made in the Complaint Petition and the statement of witnesses recorded during enquiry under Section 202 Cr. P. C. Defence of the accused cannot be looked into at the stage of enquiry under Section 202 Cr. P. C.



11. From the conduct of the petitioners as mentioned in the Complaint Petition, it is apparent that after execution of sale deed in favour of the petitioners by the Complainant the cheques issued by the petitioners in favour of the Complainant for consideration money of the land has bounced on account of 'insufficient fund'.

12. Therefore, this Court does not find any illegality in the impugned order passed by the learned Court below.

13. The application is, accordingly, **dismissed**.

14. The Court below will proceed with the trial in accordance with law.

15. The petitioners are given liberty to raise all the points, as raised in the present application, at the time of framing of Charge, which shall be considered and disposed off by the learned Court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	18-12-2017
Uploading Date	26-02-2018
Transmission Date	26-02-2018

