

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51308 of 2014

Arising Out of PS.Case No. -940 Year- 2012 Thana -COMPLAINT CASE District- BANKA

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1. Bhibhav Singh, S/o Sri Ashok Kumar Singh, resident of Mohalla- Bhawani
Bhawan, Meena Bazar Colony Papharni Road Baunsi, Police Station Baunsi,
District Banka.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Subhash Prasad Singh, S/o Sri Schchidanand Singh, resident of village-Dada,
Police Station- Banka, District Banka.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar, Advocate
For the Opposite Party/s : Mr. Navin Kumar Pandey, APP
Mr. Anil Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 19-04-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 17.08.2012 passed by the Judicial Magistrate, 1st class, Banka, in Complaint Case No.C-940 of 2012 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.

Counsel for the Petitioner has submitted that date of occurrence as mentioned in the Complaint Petition is 16.10.2009 and in Solemn Affirmation date of occurrence has been mentioned as '16.09.2010'. Therefore, impugned order of cognizance is bad in



law.

Counsel for the Opposite Party No.2 has appeared and submitted that in the Complaint Petition date of occurrence has been mentioned on different dates between 16.10.2009 to 11.05.2012 on which payment has been made by the Complainant to the Petitioner. He has further submitted that date '16.09.2010' as mentioned in Solemn Affirmation of the Complainant by the Presiding Officer appears to be slip of pen.

A report was called for from the Court below about the present stage of the case along with Xerox copy of the entire order-sheet, which has been received. From the report of the Court below, it appears that process under Section 83 Cr. P. C. has already been issued against this petitioner by order dated 10.04.2014.

From the Xerox copy of the entire order-sheet, it appears that Petitioner has not even appeared in the Court below after passing of the impugned order. In the Complaint Petition, the Complainant has mentioned about different dates between 16.10.2009 to 11.05.2012 on which money was paid to the Complainant by the Petitioner. Receipts were also given by the petitioner in token of receipt of the amount. Xerox copies of those receipts are enclosed with the Complaint Petition.

The learned Magistrate is only required to see *prima*



facie case at the time of holding enquiry under Section 202 Cr. P. C. on the basis of allegation made in the complaint, Solemn Affirmation of the Complainant as well as statement of other witnesses recorded during enquiry.

From perusal of the entire Solemn Affirmation of the Complainant, it appears that he has supported the case as mentioned in the Complaint Petition. There is mention in the Solemn Affirmation that this petitioner came to the house of the petitioner on 16.09.2010 and persuaded the Complainant for taking house loan of rupees five lac, whereas, in the Complaint Petition, the Complainant has mentioned that this petitioner persuaded the Complainant on 16.10.2009 for sanction of rupees five lac as housing loan. The Complainant has alleged in the Complaint Petition that on such persuasion he made payment of rupees eighty two thousand eight hundred to the petitioner on different dates. This fact has been supported by the Complainant in his Solemn Affirmation recorded during enquiry.

The Court below has mentioned in the impugned order that after looking into the record and the allegation made in the complaint and also the Solemn Affirmation of the Complainant *prima facie* case against the petitioner for the offence under Section(s) 420 Indian Penal Code is made out.



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

Accordingly, this Criminal Miscellaneous application is **dismissed**.

The Court below is directed to proceed with the trial in accordance with law.

Interim order of stay dated 24.11.2017 is hereby vacated.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29-04-2018
Transmission Date	29-04-2018

