

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39131 of 2012

Arising Out of PS.Case No. -38 Year- 2012 Thana -null District- PATNA

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1. Anil Kumar Singh, son of late Jagdish Prasad Singh, resident of Flat No. 104/2, Vishal Residency, Wing-2, Raja Bazar, Bailey Road, P.S.- Airport, Patna, Dist.- Patna,
 2. Asim Jha, son of late Dr. Sadanand Jha, resident of Flat No. G1/3, Vishal Residency, Wing-2, Raja Bazar, Bailey Road, P.S.- Airport, Patna, Dist.- Patna,
 3. Sunil Kumar Sharma, son of late Sachchidanand Sharma, resident of E 12/4, Purnendu Nagar, P.S.- Phulwari Sharif, Patna, Dist.- Patna
- Petitioner/s

Versus

1. The State of Bihar
 2. Sinu Singh, wife of late Rewati Raman, resident of Flat No. 504, Rameshwar Dayal Apartment, in front of A.N. College, Boring Road, Patna, P.S.- S.K. Puri, Dist.- Patna
- Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Durgesh Kumar Singh, Advocate
Mr. Sanjay Kumar Singh, Advocate
Mrs. Bela Singh, Advocate
For the Opposite Party No.1: Mr. Nawal Kishore Prasad, APP
For the Opposite Party No.2: Mr. Ujjwal Kumar Sinha, Advocate
Mr. Md. Faiz Ahmad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 07-02-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 04.07.2012 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.38-C of 2012 by which learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 379 Indian Penal Code.

2. Case of the Complainant, in brief, is that petitioners



were closely associated with the husband of the Complainant. The husband of the Complainant died on 23.02.2011. The Complainant is Proprietor of firm M/s Raman & Sons. She used to sign blank cheques, which were given to her elder son, Atul Parashar. Second son of the Complainant Ashish Parashar had also given some signed blank cheque to him. Elder son of the Complainant had kept all those signed blank cheques with him for use as per requirement. Petitioner No.1 was having greedy eyes on her property. He was trying to be a partner in the aforesaid business, which was refused by the Complainant. Son of the Complainant, Atul Parashar, gave information in the Kotwali Police Station on 05.07.2011 regarding missing of some cheques and also filed Affidavit. He also wrote letter to the Bank on the same day to stop payment of Cheque Nos. 784605 and 784606 besides other cheques number of which he did not remember. It is alleged that petitioner no.1 in conspiracy with other accused with ulterior motive has got the file containing blank cheques disappeared from the office and misused those cheques and filed a claim of rupees thirty lac against the Complainant and her son after sending legal notice to them. Petitioner no.2 also on the instigation of petitioner no.1 put claim of rupees fifty lac against the Complainant. The Complainant had never taken any money from both accused persons. She had never given those cheques to them.



Accused persons had stolen the cheques in conspiracy. Similarly, co-accused, Dadan Singh, put claim of rupees forty lac against the Complainant and her son, Atul Parashar, on the plea that he had given the aforesaid amount to the Complainant for repairing of the motor vehicle. Petitioner no.3 on instigation of petitioner no.1 put claim of rupees five lac against the son of the Complainant, Ashish Parashar, after misusing those stolen cheques, whereas, the Complainant had never taken any money from him nor given any cheque to him. It is also alleged that after death of husband of the Complainant, petitioner no.1, in April, 2011, took away all the library books of late husband of the Complainant and promised to make payment of rupees fifty thousand for those books, but he never paid the amount for which the Complainant made demand. The Complainant made demand of her cheques from the accused persons several times but they always refused. The Complainant again went to the accused persons on 29.12.2011 and demanded back her cheques then they told the Complainant either to make payment of rupees thirty lac or make the accused persons as partner in the firm and only then they will return back the cheque.

3. The Complainant alleged that the accused persons had stolen the cheque of the Complainant and misused the same after making forgery over the same and have not paid amount of



rupees fifty thousand towards purchase of old library books of late husband of the Complainant.

4. The Complainant has enclosed the letter dated 05.07.2011 given in Kotwali PS along with Affidavit of losing of those cheques as Annexure-I and also information given to the Bank dated 05.07.2011 for stopping payment of those cheques as Annexure-II to the complaint. The Complainant has also enclosed the legal notice sent by the accused persons to the Complainant as Annexure-III to VI of the Complaint Petition.

5. Heard learned counsel for the petitioners and learned APP for the State as well as counsel for the Opposite Party No.2.

6. Counsel for the petitioners has submitted that with identical allegation and same document, son of the Opposite Party No.2, Atul Parashar, had filed Complaint Case No.2116-C of 2011 on 02.08.2011 against petitioner nos.1 and 3 and co-accused Dadan Singh. The aforesaid complaint was dismissed by the learned Court below after holding enquiry by order dated 16.12.2011 (Annexure-3). The son of the Complainant, Atul Parashar filed revision being Criminal Revision No.40 of 2012 before the learned Sessions Judge, Patna, which was dismissed by the learned Sessions Judge, Patna, by order dated 21.02.2012 (Annexure-4). The Complainant has



suppressed all these facts in the instant complaint and has filed the instant Complaint Case with ulterior motive. Petitioners and the husband of the Complainant were closely associated with each other.

7. Counsel for the petitioners has submitted that the learned Magistrate has passed the impugned order in mechanical manner without applying judicial mind. The Complainant and her son have conspired together to create defence and instituted the false case. Petitioner nos.1, 2 and 3 have also filed Complaint Case against the Opposite Party No.2 and her sons vide Complaint Case No.2171-C of 2011, Complaint Case No.3288-C of 2011 and Complaint Case No.2207-C of 2011 respectively in which cognizance has been taken by the learned Court below for the offence under Section 138 of the Negotiable Instrument Act and other sections of the Penal Code. Opposite Party No.2 and her sons want to grab the entire amount of the petitioners.

8. Counsel for the Opposite Party No.2 has submitted that neither Opposite Party No.2 nor her sons had ever taken rupees thirty lac, fifty lac and five lac from the petitioners respectively. There was no occasion for the Opposite Party No.2 to sign the cheques in favour of the petitioners for such an amount. Report was already made to the Kotwali P.S. on 05.07.2011 about the loss of



cheques by the son of the Opposite Party No.2. Legal notice sent by the petitioner no.1 on behalf of Dadan Singh to Opposite Party No.2 and her sons relates to Cheque No.784606, one of the cheque for which Bank was asked by Opposite Party No.2 to stop payment. The Opposite Party No.2 could not recollect the number of other cheques, which had been lost. The petitioners have not given any valid reason as to when and how such large amounts were lent to Opposite Party No.2 and her son without any security or paper work for return of the money for which cheques, in question, were allegedly issued by the Opposite Party No.2 to the petitioners.

9. Learned APP has submitted that court below after properly appreciating the allegation in the Complaint Petition and the statement of the witnesses recorded during enquiry has passed the impugned order.

10. Crux of the argument of the petitioners is that Opposite Party No.2 and her sons have suppressed the facts in this Complaint that her son, Atul Parashar, had earlier filed another Complaint Case vide Complaint Case No.2116-C of 2011, which was dismissed by the learned Magistrate at the stage of enquiry by order dated 16.12.2011 (Annexure-3). Son of the Opposite Party No.2 had also filed Criminal Revision vide Criminal Revision No.40 of 2012 before the learned Sessions Judge, Patna, against the order



of the learned Magistrate, which was dismissed by order dated 21.02.2012. The petitioners have also submitted that Complaint Case No.2171-C of 2011, Complaint Case No.3288-C of 2011 and Complaint Case No.2207-C of 2011 have been filed by the petitioners respectively. The Court below has found *prima facie* case against the Opposite Party No.2 and her son, Atul Parashar, under Section 406 Indian Penal Code and Section 138 of the Negotiable Instrument Act in Complaint Case No.2171-C of 2011, for the offence under Section(s) 138 of the Negotiable Instruments Act in Complaint Case No.2207-C of 2011 and Complaint Case No.3288-C of 2011 is pending at the stage of enquiry.

11. This Court is of the view that enquiry is held by the Magistrate in a criminal case on the basis of the allegation made in the Complaint Petition and the statement of witnesses recorded during enquiry. Merely because Complaint filed by the son of the Opposite Party No.2 against the petitioners was dismissed at the stage of enquiry itself by the learned Magistrate by order dated 16.12.2011, will not disqualify the learned Magistrate from entertaining another complaint filed by the mother of the Complainant levelling specific allegation with cause of action in the Complaint Petition.

12. Learned Magistrate is not required to see the



defence of the accused at the time of holding enquiry. The Magistrate is only required to look into the allegation made in the Complaint Petition and the statement made by the witnesses during enquiry under Section 202 Cr. P. C.

13. The Hon'ble Supreme Court in the case of *Fiona Shrikhande Vs. State of Maharashtra* reported in (2013) 14 SCC 44 has held that at the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry Under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint.

14. In another decision of the Hon'ble Supreme Court reported in (1976) 3 SCC 736 in the case of *Nagawwa vs. Veeranna Shivalingappa Konjalgi and Ors.*, the Hon'ble Supreme Court has held that once the Magistrate has exercised his discretion



in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all advertng to any defence that the accused may have.

15. In the instant case, from perusal of the impugned order, this Court finds that learned Court below on perusal of Solemn Affirmation of the Complainant and the statement of the witnesses recorded during enquiry and also other materials available on record has found *prima facie* case for proceeding against the accused persons for the offence under Section(s) 379 Indian Penal Code.

16. Therefore, this Court does not find any illegality in the impugned order dated 04.07.2012 passed by the Judicial Magistrate, Patna, in Complaint Case No.38-C of 2012.

17. This application is, accordingly, dismissed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	09-01-2018
Uploading Date	08-02-2018
Transmission Date	08-02-2018

