

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31733 of 2015

Arising Out of PS.Case No. -2895 Year- 2006 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Dhananjay Prasad, son of Harihar Prasad (Proprietor of M/S Srishti Movies), resident of North Shastrinagar, Professor Colony, P.O. and P.S. Shastrinagar, Distt. – Patna,
 2. M/S Shristi Movies through Dhananjay Prasad (Petitioner No. 1) the Proprietor, North Shastrinagar, Professor Colony, P.O. and P.S. Shastrinagar, Distt. - Patna
..... Petitioner/s

Versus

1. The State of Bihar
2. Bibheesan Sharma, son of late Siya Ram Sharma, resident of Mohalla- Friends Colony Road No. 4, behind Jamuna Apartment, Proprietor Soni Glass, Ashina Road, P.S. Shastrinagar, Distt. - Patna
..... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoranjan Kumar, Advocate
For the Opposite Party/s : Mrs. Madhuri Lata, APP
Mr. M. N. Parbat, Sr. Advocate with
Mr. Praveen Prabhakar, Advocate
Mr. Sanjay Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 23-02-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 03.05.2014 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.2895-C of 2006 by which the learned Magistrate has rejected the petition filed by the petitioners for their discharge.

2. Counsel for the petitioners has submitted that this matter is of civil dispute. The criminal case is not in accordance with law. He has further submitted that the Hon'ble Supreme Court



in *Cr. Appeal No.2083 of 2013 (Kamlesh Kumar Vs. State of Bihar & anr.)* has held that even if trial has proceeded, the Court can interfere under jurisdiction of Section 482 Cr. P. C. Relying on the judgment of our own High Court in *Cr. Misc. No.1699 of 2005 (Tetri Devi & anr. Vs. The State of Bihar & anr.)*, counsel for the petitioners has argued that if dispute, in question, is of civil nature, criminal offence is liable to be quashed.

3. Counsel for the Complainant-Opposite Party No.2 has appeared and filed Counter Affidavit, wherein, he has stated in para 5 that after passing of the impugned order dated 03.05.2014, charges have already been framed against the petitioners on 24.11.2017 and out of five named witnesses in the Complaint Petition, two have already been examined, cross-examined and discharged. The Complainant has also been examined and cross-examined in part. The documentary evidence filed by the Complainant has already been marked as Exhibits. Counsel for the Opposite Party No.2 further submits that the present quashing application filed for quashing the order rejecting petition of discharge has, therefore, become infructuous. The trial has already started and witnesses have also been examined.

4. Counsel for the Opposite Party No.2 has further submitted that the Court below after proper application of mind and



after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 406 and 420 Indian Penal Code. The petition for discharge filed on behalf of the petitioners was also rejected by the reasoned order dated 03.05.2014.

5. This Court after looking into the impugned order passed by learned Court below finds that the Trial Court after proper appreciation of statement of witnesses has found *prima facie* case against the petitioners for the offence under Section(s) 406 and 420 Indian Penal Code. The Court below has also found sufficient material against the petitioners to frame charge for the aforesaid offence. The petition for discharge filed on behalf of the petitioners was rejected by the Court below by reasoned and speaking order dated 03.05.2014.

6. The trial has also begun in the Court below. Two witnesses have already been examined, cross-examined and discharged. The Complainant has also been examined and cross-examined in part. The documents have been produced during evidence and marked as exhibits.

7. Therefore, this Court is not inclined to interfere with the impugned order.

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



9. The Trial Court is directed to expedite the trial and make efforts to conclude the same as early as possible.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12-03-2018
Transmission Date	12-03-2018

