

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50906 of 2013

Arising Out of PS.Case No. -3335 Year- 2012 Thana -MUZFFARPUR COMPLAINT CASE
District- MUZAFFARPUR

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1. Vishwanath Jhunhunwala, S/O Late Ishwari Lal Jhunhunwala, Resident of Lal Bazar, P.S- Town Bettiah, District- West Champaran.
 2. Vijay Kumar Jhunhunwala @ Vijay Kr. S/O Sri Vishwanath Jhunhunwala Resident Of Lal Bazar, P.S- Town Bettiah, District- West Champaran.
 3. Sanjay Kumar Jhunhunwala @ Sanjay Kr. S/O Sri Vishwanath Jhunhunwala Resident of F- 18, Bhilwara Textile Market Pur Road, P.S+ Pratap Nagar, District- Bhilwara.

.... Petitioner/s

Versus

1. The State of Bihar
2. Raushan Lal Barolia, S/O Late Ram Kumar Barolia Proprietor Of M/S Barolia Sales Corporation Mohalla- Gajadhar Choudhary Lane, Dhobiya Gali, Sutta Patti, P.S- Town, Distt- Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. D.N.Tiwari, Advocate.

For the State : Mr. Ajay Kumar No. 1, APP.

For the O.P. 2 : Mr. Mayank Shekhar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 15-01-2018

Heard learned counsel for the petitioners and learned counsel for the State.

2. Petitioners seek quashing of the order dated 11.02.2013 passed by the Chief Judicial Magistrate, Muzaffarpur in Complaint Case No. 3335 of 2012 thereby taking cognizance of



offence against the petitioners under Sections 406 and 420 of I.P.C.

3. The short fact giving rise to the case is that accused persons one day came to the shop of the complainant and proposed to open a retail cloth shop in Lal Bazar, Bettiah. Complainant gave them clothes on the promise to return back the money after selling those clothes and in case of clothes not being sold, it would be returned back to the complainant. On this condition, he supplied clothes worth Rs. 3,66,845/- to the shop and Rs. 20,000/- was paid on that very day with a promise that remaining amount shall be paid later on after selling the clothes but neither money was paid back nor the cloth was returned so they have misappropriated clothes worth Rs. 3,46,845/-.

4. Learned counsel for the petitioner submits that another co-accused Jai Kumar Jhunjunwala had lodged an FIR in the District of Bhilwara State of Rajasthan, on 20.10.2012, being Pratap Nagar P.S.Case No. 492 of 2012 under Sections 406, 409, 420 and 120B of I.P.C. against the present complainant Roshan Lal Barolia and his son Raj Barolia, as the accused persons, the present complainant were working as agent used to supply goods to retailers and collected money but after collection, they did not deposit the money with the informant Jai Kumar Jhunjunwala rather misappropriated Rs. 3,56,000/- approximately. The complainant of the present case appeared in that case at the time of bail and deposited Rs. 3,56,000/-



thereafter provisional bail earlier granted was confirmed. Subsequently, after lapse of approximately one and half month, present complaint case was filed without any cause of action to wreck vengeance, so a malicious prosecution. Learned counsel further submits that Jai Kumar Jhunhunwala, one of the co-accused of the present complaint, earlier had filed quashing application bearing Cr. Misc. No. 19991 of 2013 before this Hon'ble Court for setting aside cognizance order dated 11.02.2013, the impugned order in the present case also as well as subsequent entire criminal proceeding; and by order dated 03.06.2014, this Court has quashed the same holding the present complaint a malicious prosecution and the case of the present petitioners in the backdrop of the facts of the case is identical.

5. Learned counsel appearing on behalf of the O.P. No. 2 submits that allegations made out in the complaint do constitute ingredients of cheating and breach of trust. However, it is admitted that Jai Kumar Jhunhunwala, one of the co-accused, had earlier filed a police case against the complainant.

6. Having considered the rival submissions and on perusal of record, the Court finds that allegation is that a shop was opened in partnership of the complainant and the accused persons and clothes were supplied by the complainant. It is also admitted position that there is no any written agreement mentioning any terms and



conditions of the partnership so there is no inducement at the very inception of the partnership, moreover in absence of any ingredients of cheating, no *prima facie* case of cheating and breach of trust is made out in the present backdrop of the facts of the case, as the same is business transaction in between both sides. There is also no entrustment of the dominion of any property given to the accused persons. The accused persons including the complainant were partners of the cloth shop.

7. Earlier, in Cr. Misc. No. 19991 of 2013 filed by Jai Kumar Jhunhunwala, a co-ordinate Bench of this Court vide order dated 03.06.2014 has set aside the criminal proceeding inclusive of the cognizance order against him, coming to the conclusion that present complaint is malicious one, as it was lodged only in retaliation to wreck personal vengeance for the reason that Pratap Nagar P.S.Case No. 492 of 2012 in Rajasthan was filed against the present complainant and his son. There is identical allegation against the present petitioners as it was against Jai Kumar Jhunhunwala, petitioner of Cr. Misc. No. 19991 of 2013, wherein it has been held that present complaint is malicious prosecution, this Court is also of the similar view, so the entire criminal proceeding inclusive of the cognizance order dated 11.02.2013 passed in Complaint Case No. 3335 of 2012, pending in the court of C.J.M., Muzaffarpur is hereby



quashed.

8. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.01.2018
Transmission Date	20.01.2018

