

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51218 of 2014

Arising Out of PS.Case No. -859 Year- 2013 Thana -MADHUBANI COMPLAINT CASE District-
MADHUBANI

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Rajni Kant Pandey son of Sri Kamla Kant Pandey, resident of Pandey Lane, Club Road, P.S. Mithapur, District Muzaffarpur at present General Manager, Chevorlet Pandey Motor Private Limited, Mithila Body Builder, N.H. 28, near Bhagwanpur Gobarshahi Chowk, P.S. Sadar, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Shyam Kumar Sah, son of Sri Bindeshwar Sah, resident of Kanhauli Ward No. 6, Nagar Panchayat Jhanjharpur, P.S. Jhanjharpur, District Madhubani

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Singh, Advocate.
For the opposite party No.2 : None.
For the State : Mr. Narsing Tanti, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 12-02-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 11.04.2014 passed by the learned Judicial Magistrate, 1st Class, Jhanjharpur, in Complaint Case No. C.R. 859 of 2013 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner for the offence under Section 406 of the Indian Penal Code.

2. Notice was issued to the opposite party No. 2 which was validly served.

3. Learned counsel for the opposite party No. 2 has



appeared on 29.01.2018 and took two weeks' time to file counter affidavit. But today during hearing of this petition, none appears on behalf of the opposite party No. 2.

4. Learned counsel for the petitioner has appeared and submitted that from bare perusal of the complaint petition, no offence is made out under Section 406 of the Indian Penal Code.

5. The complainant has alleged in the complaint petition that he has purchased Chevorlet Tavera vehicle from Pandey Motor Private Ltd. in which the petitioner was General Manager. The accused persons allegedly made demand of Rs.30,000/- as illegal gratification from the complainant to hand over the registration and other papers related to the vehicle in question to the complainant. It is alleged that on 3.4.2013 an amount of Rs.40,000/- was paid through cheque by the complainant as an advance amount. The aforesaid cheque got bounced, but no information was given by the petitioner to the complainant at the time of bouncing of cheque or at the time of purchase of vehicle. The complainant went to Muzaffarpur to collect the documents then he was informed that cheque has got bounced. The complainant deposited Rs.40,000/- in cash on 1.6.2013. The complainant has finally alleged that his vehicle met with an accident on 2.7.2014 and due to non-providing the necessary documents by the petitioner, the Insurance Company did not give claim to the



complainant which resulted in loss of Rs.6,50,000/- to him.

6. Learned counsel for the petitioner has submitted that after making payment of full amount, all the necessary papers relating to the vehicle purchased by the complainant were handed over to him which is mentioned in the complaint petition itself. The delay in registration and other process took place because of the fact that the complainant did not make full payment of the amount in the company as mentioned in the complaint petition itself. It is apparent from the complaint petition itself that vehicle was delivered to the complainant by the company and the vehicle met with an accident on 2.7.2013 on Muzaffarpur Patna route. Therefore, there was no entrustment of property of the complainant with this petitioner. The vehicle was already delivered to the complainant. The Company also took all necessary steps for registration of the vehicle and handed over all relevant papers to complainant on 26.7.2013 after making full payment by the complainant.

7. The instant complaint case has been lodged by the complainant on 1.10.2013, after a lapse of three months from the date of accident of the vehicle. During this period all the necessary papers of vehicle was also delivered to the complainant by the petitioner on 26.7.2013. It appears that complainant has filed the instant case in an attempt to recover the loss from the company when the Insurance



Company declined to make payment of amount of loss to the complainant.

8. In such circumstances, the court below has committed illegality in passing the impugned order by which the learned Magistrate has found prima facie case against the petitioner for the offence under Section 406 of the Indian Penal Code.

9. Therefore, the impugned order dated 11.04.2014 passed by the learned Judicial Magistrate, 1st Class, Jhanjharpur, in Complaint Case No. C.R. 859 of 2013 is hereby quashed.

10. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV Date	N.A.
Uploading Date	20/02/2018
Transmission Date	20/02/2018

