IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42256 of 2013

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

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1. Alok Kumar, son of Sri Samrendra Nath Sinha, residing at c/o S N Sinha, Plot No. 4H - 97, Bahadurpur Housing Colony, Kankarbagh, P.S. Kankarbagh, Patna - 800026

.... Petitioner/s

Versus

1. The State of Bihar
2. Kiran Shankar Jaiswal, son of late Daya Prakash Jaiswal, Sakin Gateway Electronics, Aadhar Sheela Complex, P.S. Gandhi Maidan, District Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhakar Nath Rai, Advocate
For the Opposite Party/s : Dr. Rabindra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 06-03-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 12.05.2010 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.3723-C of 2006 by which the learned Magistrate has dismissed the petition filed by the petitioner for his discharge as well as order dated 19.01.2012 passed by the Additional Sessions Judge, IX, Patna, in Cr. Revision No.525 of 2010 by which the order passed by the learned Magistrate was affirmed.

2. Heard learned counsel for the petitioner and the learned APP for the State.

3. Notice was issued to the Complainant-Opposite

Party No.2, which has validly been served but the Complainant did not appear either personally or through his lawyer.

4. Counsel for the petitioner has submitted that he was Branch Manager of ICICI Bank on the relevant date of occurrence. He has no concern with the money transaction of the petitioner nos.1 and 2 with the Complainant. He was merely Branch Manager of Collecting Bank, where the Complainant is alleged to have deposited the cheque for collection, which was issued in his favour by accused no.1, Sanjeev Kumar.

5. Allegation in the Complaint Petition is that the Complainant is a businessman having shop in the name and style of Gateway Electronics. Accused no.2 is Chartered Accountant. Accused no.2 came with Accused no.1 and told that he is known to him and he requires rupees fifty thousand. The Complainant gave account payee cheque for rupees thirty one thousand. The accused gave assurance to repay the amount within one week. When the Complainant made demand of the aforesaid amount from accused nos.1 and 2 then accused no.1 returned rupees one thousand in cash and gave one cheque dated 11.05.2006 for rupees thirty thousand drawn on SBI, Maurya Lok Complex Branch, Patna. The Complainant deposited the aforesaid cheque in his account in ICICI Bank on 09.09.2006. It is further alleged that the amount was not encashed till October, 2006. The bank neither returned the cheque nor gave any information about bouncing of the cheque. The Complainant sent legal notice to this petitioner through Speed Post. The Complainant made inspection of his statement of account and then learnt that the aforesaid cheque has got bounced due to insufficient fund in the account of the drawer. Cheque return memo and the cheque were never returned by this petitioner on account of which the petitioner could not file a case under the Negotiable Instrument Act against accused no.1. The Complainant has alleged that he suspects involvement of this petitioner also in the aforesaid act.

6. The Court below after holding enquiry has found *prima facie* case against this petitioner and other accused persons as named in the Complaint Petition for the offence under Section(s) 418 and 120-B Indian Penal Code.

7. Counsel for the petitioner has submitted that criminal prosecution against one of the accused, namely, Rajendra Narayan Bedi, has already been quashed by a co-ordinate Bench of this Court by order dated 28.02.2013 passed in Cr. Misc. No.25312 of 2010.

8. The petitioner filed discharge petition before the learned Magistrate, which was rejected by order dated 12.05.2010.

The learned Magistrate has mentioned in the aforesaid order that this petitioner being Branch Manager failed to inform regarding cheque bouncing to the Complainant and, therefore, certain suspicion arises on the part of this petitioner along with other accused persons resulting in loss to the Complainant and therefore, there are materials to frame charge in the case.

9. Necessary ingredient for the offence under Section 418 Indian Penal Code is cheating with dishonest intention in delivery of the property. In the instant case from the Complaint Petition, it appears that the Complainant has alleged in the complaint that he paid money to accused no.1 after believing the words of accused no.2. It is also stated in the Complaint Petition itself that accused no.1 returned rupees one thousand in cash and gave cheque of rupees thirty thousand drawn on SBI, Maurya Lok Complex and the aforesaid cheque was deposited in the Collecting Bank i.e. ICICI Bank where the Complainant has account. The cheque was not cleared by the drawer bank as there was no sufficient fund in the account of the accused no.1. The petitioner, who is Branch Manager of ICICI Bank, has no role to play in getting the cheque bounced as the cheque got bounced during clearance by the drawee bank on the ground that drawer (accused no.1) has no sufficient fund in his account.

10. Therefore, no ingredients for the offence under Section 418 Indian Penal Code can be attracted against this petitioner.

11. Accordingly, impugned order dated 12.05.2010 passed by the Judicial Magistrate, 1^{st} class, Patna, in Complaint Case No.3723-C of 2006 as well as order dated 19.01.2012 passed by the Additional Sessions Judge, IX, Patna, in Cr. Revision No.525 of 2010 along with entire criminal proceeding against the petitioner is hereby quashed.

12. The application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	**NAFR**
CAV DATE	**N/A**
Uploading Date	**21-03-2018**
Transmission Date	**21-03-2018**