

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.33723 of 2011**

- 
1. Pramod Kumar Nirala S/o Asharfi Lal R/o Moh.-Kamla Nehru Nagar, P.S.-Kotwali, Distt.-Patna
  2. Narendra Kumar Verma S/o Late Shiv Nandan Prasad Verma R/o Moh.-P.C. Colony, P.S.-Kankarbagh, Distt.-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dr. Jai Shankar Prasad Jha S/o Ugra Narayan Jha R/o F-123, P.C. Colony, Kankarbagh, Patna

... .. Opposite Party/s

---

**Appearance :**

|                          |   |                                            |
|--------------------------|---|--------------------------------------------|
| For the Petitioner/s     | : | Mr. Pradhan Murli Manohar Prasad, Advocate |
|                          |   | Mr. Raju Kumar Goswami, Advocate           |
| For the Opposite Party/s | : | Mr. Vinod Shankar Modi, Advocate           |

---

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN  
AMANULLAH**

**ORAL JUDGMENT**

**Date : 07-12-2018**

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

2. Despite service of notice on opposite party no. 2,  
through his counsel appearing in the Court below, nobody  
appeared when the case was taken up and heard.

3. The petitioners have moved the Court under Section  
482 of the Code of Criminal Procedure, 1973 for the following  
relief:

*“ That the present application is for  
quashing the order dated 17.09.1999 passed  
by Sri V. P. Singh, the learned Judicial  
Magistrate, Patna after cognizance u/s 420 &  
120B of the I.P.C. in Complaint Case no. 634*



*of 1999 at present the case is pending before Sri Parbal Dutta, the learned Judicial Magistrate, Patna.”*

4. The petitioners were employees of M/s Zinkenite Coal and Gas India Ltd. of which the complainant was also a Director. In the complaint, it is alleged that the petitioners had defalcated huge amount of money of the Company either by way of encashing cheques after forging the signature of the opposite party no. 2 or by using the money-order amounts received for their personal use.

5. The Court below after examining the opposite party no. 2 on S.A. also examined four witnesses in support of the complaint and ultimately has taken cognizance on 17.09.1999 under Sections 420 and 120B of the Indian Penal Code which is assailed in the present application.

6. Learned counsel for the petitioners submitted that the complaint is totally frivolous as it has been filed without any basis and for oblique reasons. It was submitted that the same does not contain even a single detail of any wrong committed by the petitioners, inasmuch as, there is no mentioning of either the dates on which the petitioners encashed any fraudulent cheques or money-orders as well as no number or amount of such cheques and money-orders. Learned counsel further submitted that the



complainant in fact has committed various offences for which many criminal cases are pending against him. Even with regard to the evidence of the complainant himself and the four witnesses, it was submitted that they are absolutely vague without any specific date on which the alleged fraudulent cheques were encashed. Learned counsel submitted that the witnesses in their reply to Court queries have admitted that they did not remember the dates on which the alleged offences were committed by the petitioners and have further admitted that they did not give any written complaint to the management or the police. It was submitted that the witnesses who are or were at one point of time employees of the company have been tutored and managed by the opposite party no. 2 to give false evidence which would be clear from the fact that they have not stated anything specific with regard to any cheating and dishonesty committed by the petitioners.

7. Learned A.P.P. submitted that the Court has rightly taken cognizance after considering the complaint and deposition of witnesses and the petitioners would get ample opportunity to present their case before the Court at the time of framing of charge.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court



finds that a case for interference has been made out. The contention of learned counsel for the petitioners that the complaint as well as the deposition of the witnesses is totally vague is reflected from the materials on record. For a criminal action to be set into motion, there should be ample and specific materials to indicate that the accused have committed the offence. Mere vague statements, even though making out some ingredients of some offence, would not substitute for the requirement of there being specific instance like the number of cheques and money-orders and the dates as well as the amount of money which is alleged to have been defalcated by the petitioners. Thus, a vague allegation of there being general misappropriation would not satisfy the requirement of Sections 420 and 120B of the Indian Penal Code for a cognizance to be taken based on such averments made in the complaint and the deposition of the witnesses, as has been done in the present case. The Court, thus, finds that letting the complaint to proceed would be an abuse of the process of the Court.

9. For the reasons aforesaid, the application stands allowed.

10. The order of cognizance dated 17.09.1999 passed by Mr. V.P. Singh, learned Judicial Magistrate, Patna taking cognizance under Sections 420 and 120B of the Indian Penal Code



in Complaint Case No. 634 of 1999 against the petitioners is set aside.

11. The lower Court records be returned forthwith.

**(Ahsanuddin Amanullah, J)**

P. Kumar

|          |  |
|----------|--|
| AFR/NAFR |  |
| U        |  |
| T        |  |

