

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34767 of 2011

Sanjay Kumawat @ Sanjay Jalandhara, S/O Late Badri Prasad, Managing Director Of M/S Maharshi Badri Pharmaceutical, Baidya Bhawan Shilp Colony, Jhotwar, P.S. Jaipur In The Town And District Of Jaipur (Rajasthan)
... .. Petitioner/s

Versus

1. The State Of Bihar
2. Dipak Kumar, S/O Sri Chandeshwar Pandey, Akharaghat, P.S. Muzaffarpur Town In The District Of Muzaffarpur

... .. Opposite Party/S

Appearance :

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Sr. Advocate
Mr. Amrit Anumay, Advocate
For the Opposite Party/s : Mr. M.N.Jha, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date : 13-08-2018

Heard learned Counsel for the petitioner and the
learned Counsel appearing on behalf of the State.

2. The petitioner by filing this quashing application under Section 482 of the Code of Criminal Procedure 1978 seeks quashing of the impugned order dated 09.09.2009, passed in Complaint Case No. 2399 of 2008 by the learned Judicial Magistrate, First Class Muzaffarpur, whereby he has upheld the order taking cognizance of the offence under Section 418 and 420 of the IPC.

3. The complaint case, in brief, is that the complaint entered into an agreement with the petitioner Sanjay Kumawat proprietor of M/s Maharshi Biddi Pharmaceuticals and Chief Executive Officer, Anil Kumar Gupta of the aforesaid company and persuaded the complainant to be super-distributor of three districts for selling the medicine manufactured by the company



and also assured of giving logistics support in sale. In the first transaction till the complainant gets the vat number, they promised to supply the medicine through accused No. 3 and 4 namely Pawan Baghadia proprietor, M/s. Anshu Enterprises, Darbhanga and Anand Ji, M/s. Nixed Marketing Private Limited, Dhanbad, Jharkhand.

4. On 18.06.2007, two cheques were issued by the complainant in the name of M/s. Anshu Enterprises and medicines were supplied, later on 13.09.2017, Anil Kumar Gupta Chief Executive Officer also signed an agreement with the complainant the same day two cheques in total of Rs. 10 Lacs was issued to the complainant in the name of Maharshi International, but medicines only worth Rs. 5 Lacs were supplied and the logistic support earlier provided by the company through M/s. Nixed Marketing Private Limited was also withdrawn causing fall in the business. So, in this way the accused persons cheated the complainant as a result subsequently incurred loss to the tune of Rs. 14 Lacs in the business.

5. Learned counsel for the petitioner submits that petitioner was the proprietor of Maharshi Bidhi Pharmaceuticals, but he has not entered into an agreement with the complainant and has no knowledge about the same. The Chief Executive Officer, Anil Kumar Gupta, has entered into an agreement with the complainant which is an admitted position, moreover, cheques



were not issued in the name of petitioner rather it was in favour of Maharshi International which supplied medicines worth Rs. 5 Lacs and remaining medicine to the tune of Rs. 5 Lacs was not supplied.

6. Learned counsel for the petitioner submits that in order to persuade the complainant, prima facie, it has to be shown that the accused had any intention of cheating right from the inception of entering into the agreement or business transaction with the complainant, however, there is no such transaction between the complainant and the petitioner. In this view of the matter no prima facie case of cheating is made out under Section 418 and 420 of I.P.C. against the petitioner.

7. Whereas, contrary to the aforesaid submission, learned counsel appearing on behalf of the complainant submits that the petitioner being the owner of Maharshi Biddi Pharmaceutical was present at the time of signing the agreement with Anil Kumar Gupta, Chief Executive Officer, but he concealed that he is not signatory on the said document.

8. Having considered the rival submissions of both sides and on perusal of records, the court finds absence of specific accusation against the petitioner as he is neither entered into an agreement with the complainant nor issued cheques in his name



rather cheques were issued in favour of Maharshi International, though, the petitioner is the proprietor of Maharshi Bidhi Pharmaceuticals, hence, prima facie, as cheating is not made out against the petitioner. There is no accusation of practicing deception by the petitioner against the complainant showing his fraudulent and dishonest intention at the time of making such promise. However, the agreement was in between complainant and Anil Kumar Gupta, Chief Executive Officer of the company. The grievance of the complainant is that cheques of Rs. 10 Lacs was given in favour of Maharshi International and not in favour of Maharshi Bidhi Pharmaceuticals.

9. The Section 415 of the I.P.C. defines offence of cheating which reads as follows:

(a). whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property,

(b) intentional inducement to the person so deceived to do anything which he would not do or omit to do anything otherwise, he would not have done if he were not so deceived.

(C) and that act or omission causes or is likely to cause any damage or harm to the person deceived in body, mind and reputation or property.

10. Moreover, it is also necessary to show that person who has cheated had fraudulent or dishonest intention at the time



of making such promise. However, in the present case as held also, prima facie, not being made out against him under Section 418 and 420 of the IPC.

11. The complainant issued cheques issued in favour of Maharashi International and not to Maharshi Bidhi Pharmaceuticals, so in absence of any accusation of cheating being made out against the petitioner in the complaint allowing criminal proceeding against him would be an abuse of the process of the court. Hence, the impugned order of cognizance dated 9th September 2009, passed in complaint case no. 2399 of 2008 by the Judicial Magistrate 1st Class Muzaffarpur as well as the subsequent criminal proceeding in the matter only in context of the petitioner is hereby quashed. The application stand allowed.

(Arun Kumar, J)

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Uploading Date	
Transmission Date	

