

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40268 of 2016

Arising Out of PS.Case No. -332 Year- 2013 Thana -KANKARBAGH District- PATNA

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1. Vimla Jha, wife of Shri Bir Shankar Jha,
 2. Bhavendra Jha, son of Shri Bir Shankar Jha, both resident of D-129, Krishna Park, Devli Khanpur Road, New Delhi- 110068, P.S.-Khanpur, District-New Delhi.

.... Petitioner/s

Versus

1. The State of Bihar
2. Shailendra Kumar Singh, son of late Sri Bhagwan Singh, resident of D-40, People Cooperative Colony, Lohia Nagar, Kankarbagh, P.S.-Kankarbagh, District Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Vijay Kumar Singh, Advocate
For the Opposite Party/s : Mr. APP
Mr. Hansraj, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 11-09-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 05.02.2014 passed by the Judicial Magistrate, 1st class, Patna, in Kankarbag P.S. Case No.332 of 2013 by which learned Magistrate has taken cognizance against the Petitioners for the offence under Section(s) 420/34 Indian Penal Code and Section 138 of the Negotiable Instruments Act.

Heard counsel for parties.

Counsel for the Petitioners submits that it is matter of



purely civil dispute. He has further submitted that there is no mention in the written report the date on which notice was issued. There is also no mention in written report that notice required under Section 138 (b) of the Negotiable Instruments Act was sent to Petitioners. The order of cognizance under Section 138 of the Negotiable Instruments Act is, therefore, bad in law.

Counsel for the Petitioners has further submitted that there is no ingredient of offence under Section(s) 420 Indian Penal Code in the entire written report. He has relied on the decisions of Supreme Court in the case of *Yogendra Pratap Singh Vs. Savitri Pandey* reported in (2014) 10 SCC 713 and in the case of *V. Y. Jose & Ors. Vs. State of Gujarat* reported in (2009) 3 SCC 78 in support of his aforesaid submission. Counsel for the Petitioners has further submitted that he has earlier filed a complaint before the SHO, Mehrauli P.S., New Delhi, about not returning of three cheque(s), which were issued to the Informant for security purposes (Annexure-4). Petitioner No.2 also sent letter to the Informant at his address making request to return his three cheque(s) (Annexure-5). It is also stated that the Petitioners also filed a case through the authorized representative against the Informant in the District Consumer Forum, New Delhi, on 13.02.2013 in which notice was issued to the Informant. The Informant appeared after issuance of notice and



contacted Petitioner No.2 and assured that he will return the security cheque(s). Copy of aforesaid Consumer Complaint Case has been annexed as Annexure-6. It is also stated that Petitioners' firm had also filed a case against the Informant vide Mehrauli P.S. Case No.910 of 2013 for creation of false and fabricated vouchers/invoices for the purpose of production of security cheque(s) (Annexure-7).

Counsel for the Opposite Party No.2 submits that at the time of cognizance defence of the Petitioners are not required to be seen by the Trial Court. He has further submitted that there is specific averment in the written report that notice was sent to the Petitioners after bouncing of cheque(s), but no action was taken. Thereafter, instant case has been lodged.

Detailed Counter Affidavit has been filed on behalf of the Opposite Party No.2, wherein, it has been stated that case filed by the Petitioners vide Mehrauli P.S. Case No.910 of 2013 was found to be false by the police after investigation and final form was submitted. It is also submitted that final form has been enclosed as Annexure-A to the Counter Affidavit. It has further been submitted that complaint filed in the Consumer Court has also been dismissed (Annexure-B).

This Court after looking into the impugned order and



the allegation made in the Complaint Petition finds that in the written report it is alleged that Petitioner No.2 and Petitioner No.1, who were Directors of M/s Unique Tourism Ltd. having its office at New Delhi, approached the Informant for doing business. Thereafter, they received petrol and diesel on credit basis for vehicle of the Petitioners from the Delhi Branch of the Informant with assurance that after issuance of bill payment will be made within fifteen days. But, payment was not made within time on account of which dues accrued. The demand was made by the Informant from the Petitioners then the Petitioners issued two cheque(s) totaling amount of Rs.43,48,204/- and when those cheque(s) were presented in the bank, the same got bounced on account of insufficient fund.

It further appears from Complaint Petition that Informant has informed the Petitioner by Courier and Speed Post about bouncing of cheque(s) with request to Petitioners to make payment by Demand Draft, otherwise, the Informant will be compelled to take action against them. From allegation in the Complaint Petition, it also appears that there is *mens rea* of criminal offence.

The learned Magistrate after looking into the allegation in the written report and charge-sheet submitted by the police and also materials available in the case diary has found *prima facie* case



and has, accordingly, taken cognizance against the Petitioners for the offence under Section(s) 420/34 Indian Penal Code and Section 138 of the Negotiable Instruments Act.

Therefore, this Court does not find any illegality in the impugned order passed by the Court below.

This application is, accordingly, **dismissed**.

The Petitioners are given liberty to raise all the points, as raised in the present application, at the time of framing of Charge, which shall be considered and disposed off by the learned Court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18-09-2018
Transmission Date	18-09-2018

