

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.34174 of 2016**

Arising Out of PS.Case No. -772 Year- 2015 Thana -AURANGABAD COMPLAINT CASE  
District- AURANGABAD

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1. Sunil Kumar, Advocate, son of late Sri Kedar Nath Bhagat.
2. Anil Kumar, son of late Sri Kedar Nath Bhagat
3. Amit Kumar, son of late Sri Kedar Nath Bhagat
4. Ranjeet Kumar, son of late Sri Kedar Nath Bhagat

All resident of House No. 1653, Block A, Green Field Colony, Faridabad, Haryana.

.... .... Petitioner/s

Versus

1. The State of Bihar
2. Rama Shankar Prasad, son of Lal Bihari Lal, aged about 45 years, resident of 1<sup>st</sup> Floor, Roy Building, Airport Road, Hinoo, Ranchi, Jharkhand. Also at New Area Bie-Pass Road, Aurangabad, Bihar.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Lokesh Kumar Singh, Advocate.  
For the Opposite Party/s : Mr. Brajendra Nath Pandey, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**Date: 06-09-2018**

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 10.11.2015 passed by learned Judicial Magistrate, 1<sup>st</sup> Class, Aurangabad, Bihar, in Complaint Case No. 772 of 2015, Trial No. 841 of 2016 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offences under Sections 420, 406 and 384 of the Indian Penal Code.

2. Heard learned counsel for the petitioners and learned counsel for the State.

3. None appeared on behalf of the opposite party No.



2 although notice issued to the opposite party No. 2 has been validly served.

4. Counsel for the petitioners has submitted that it is totally malicious prosecution filed by the complainant to harass the petitioners.

5. The submission made on behalf of petitioners is that petitioners approached opposite party No. 2 in the month of October, 2010 and expressed their intention on 19.02.2010 for purchasing a plot of land measuring 1500 square feet in village Hatia, Nayak Basti, P.S. Jagarnathpur, Distt. Ranchi (Jharkhand). The petitioners made part payment on different dates for Rs.3,22,101/- and the same was acknowledged by opposite party No. 2. Petitioners thereafter approached opposite party No. 2 in the month of October, 2011 and expressed their intention to pay balance amount and requested for execution of sale deed but opposite party No. 2 always avoided the same. Thereafter, petitioners having no option left, sent letter for cancellation of booking and claimed refund of advance amount paid by them. Petitioner No. 1 on behalf of petitioner No. 4 made an application dated 06.03.211 to Opposite Party No. 2, for cancellation and refund of the advance money of Rs.3,22,1010/-. The said letter has been accepted and was acknowledged by the Opposite Party No. 2. Certified copy of aforesaid letter has been enclosed as



Annexure-4. The opposite party No. 2 in discharge of his legal liability towards petitioner No. 4, issued a post dated cheque bearing No. 519236 dated 02.04.2011 for Rs.3,22,101/- drawn on Bank of Rajasthan Limited, Ranchi, in favour of petitioner No. 1, certified copy of which, has been enclosed as Annexure-5. Subsequently, petitioner No. 1 deposited aforesaid cheque in Bank on 11.04.2011 for encashment which was returned unpaid by the Bank on 15.4.2011 with a return memo stating remark “insufficient fund”. Thereafter, petitioner No. 1 issued demand notice on 30.4.2011 to Opposite Party No. 2 calling him to pay the cheque amount within 15 days. It has further been submitted that having no action taken by opposite party No. 2, petitioners have filed case against opposite Party No. 2 for the offence under Section 138 of N.I. Act before the Chief Metropolitan Magistrate, Patiala House Court, New Delhi, vide Complaint Case No. 3951/1, in which, summons have been issued against the Opposite Party No. 2 vide order dated 7.6.2011. Certified copy of complaint case No. 3951/1 has been enclosed as Annexure-6. Opposite party No. 2 did not appear before Metropolitan Magistrate, Patiala House Court, New Delhi even after issuance of summons. Consequently, a bailable and non-bailable warrant was issued. Thereafter, Metropolitan Magistrate issued process under Section 82 Cr. P.C. against opposite party No. 2. Thereafter, in the year 2015, the instant complaint has



been filed by opposite party No. 2 against the petitioners levelling allegation that he has returned advance amount in cash and has given cheque No. 519236 dated 2.4.2011 for Rs.3,22,101/- drawn on Bank of Rajasthan Limited, Ranchi, in favour of petitioner No. 1.

**6.** The allegation in the complaint petition is that petitioners have paid Rs.3,22,101/- in four installments as advance amount against sale consideration of a plot of land situated at village Hatia, Distt. Ranchi for total sale consideration of Rs.6,00,000/-. The complainant has refunded the said advance amount by issuing cheque No. 519236 dated 2.4.2011 for Rs.3,22,101/- drawn on Bank of Rajasthan Limited, Ranchi, in favour of petitioner No. 1. It is further alleged that on request of petitioners the complainant paid Rs. 3,25,000/- to petitioner No. 4 in cash on assurance to return the cheque No. 519236 to the complainant but the said cheque was never returned. It is further alleged that thereafter, petitioners were forcing the complainant to deposit further amount by giving threat as mentioned in detail in complaint petition.

**7.** The point for consideration by this Court is whether the instant complaint filed by the complainant is bona fide one or the same is totally malicious complaint filed only to harass the petitioners.

**8.** Annexure-6 is the complaint petition filed by



petitioner No. 1 against opposite party No. 2 in the Court of Chief Metropolitan Magistrate, Patiala House Court, New Delhi in the year 2011 with respect to aforesaid cheque issued by the opposite party No. 2 in favour of petitioner No. 1 in lieu of taking advance amount. The aforesaid cheque was deposited in the Bank by petitioners illegally which got bounced. The summons was issued in that case to opposite party No. 2, who did not appear. Thereafter, process under Section 82 Cr. P.C. has also been issued. These are matters of record as would appear from Annexure-6 enclosed with this petition.

**9.** The instant complaint has been filed by the complainant in the year 2015 levelling allegation against the petitioners that they did not return Cheque No. 519236 dated 2.4.2011 issued by the opposite party No. 2 in favour of petitioner No. 1 for Rs.3,22,101/- even after making payment by Opposite Party No. 2 by cash.

**10.** In the complaint petition the opposite party No. 2 has admitted of having entered into agreement with the petitioners for purchase of land as mentioned in the complaint petition. It is also admitted that opposite party No. 2 received amount of Rs.3,22,101/- as advance money. The sale deed was not executed, then on demand, the opposite party No. 2 issued Cheque No. 519236 dated 2.4.2011 for Rs.3,22,101/- towards refund of the amount. The complainant further



stated in the complaint petition that he has paid amount subsequently by cash on assurance given by the petitioner No. 4 to return the aforesaid cheque for the same amount received by him from opposite party No. 2.

**11.** The instant complaint has been filed by opposite party No. 2 after filing of complaint by petitioner No. 1 in the year 2011 vide Complaint Case No. 3951/1 of 2011. From plain reading of instant complaint, it appears that vague story has been propounded by opposite party No. 2 to save himself from criminal prosecution of the case filed by the petitioners against opposite party No. 2 under Section 138 of N.I. Act before the Chief Metropolitan Magistrate, Patiala House Court, New Delhi and to harass the petitioners.

**12.** The counsel for the petitioner has relied on a **decision of Hon'ble Supreme Court** reported in *1992 Supl (1), Page, 335, (State of Haryana Vrs. Bhajan Lal & Ors. )* in which the Hon'ble Supreme Court has clearly laid down in Clause-7 of paragraph-102 that "where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge", is liable to be quashed.

**13.** In the instant case on the basis of allegation in the



complaint petition, this Court is of the view that the instant criminal case has been filed by the opposite party No. 2 only to harass the petitioners to save himself from the criminal prosecution filed by the petitioners for dishonour of cheque under Section 138 of Negotiable Instruments Act, which is pending before learned Chief Metropolitan Magistrate, Patiala House Court, New Delhi and the same was filed much prior to the filing of instant complaint in the year 2011.

**14.** Therefore, continuance of instant criminal proceeding against petitioners will be abuse of process of the court and harassment to the petitioners.

**15.** Accordingly, the impugned order dated 10.11.2015 passed by learned Judicial Magistrate, 1<sup>st</sup> Class, Aurangabad, Bihar, along with entire Criminal Proceeding of Complaint Case No. 772 of 2015, Trial No. 841 of 2016 against the petitioners, is hereby, quashed.

**16.** This Criminal Miscellaneous application is therefore allowed.

**(Sanjay Priya, J)**

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| CAV DATE          | N.A.       |
| Uploading Date    | 14/09/2018 |
| Transmission Date | 14/09/2018 |

