

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5688 of 2016

Arising Out of PS.Case No. -928 Year- 2012 Thana -AURANGABAD COMPLAINT CASE
District- AURANGABAD

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1. Punam Devi W/o Ravi Kumar
 2. Ravi Kumar son of Sudama Prasad, Both R/O Village + P.S.- Deo, Distt. Aurangabad (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar
2. Dasarath Yadav son of Late Dhuran Yadav R/o Village- Pandeypur, P.S. + Distt. Aurangabad (Mufasssil) (Bihar)

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kr Singh No. 6, Advocate

For the Opposite Party/s : Mr. Rajesh Kumar (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 27-09-2018 Heard learned counsel for the petitioners as well as learned APP.

2. An allegation has been attributed at the end of O.P. No.2 that there was negotiation in between the accused as well as complainant with regard to sale of land bearing plot no. 2741 and the negotiation was finalized over Rs. 6,50,000/-. Rs. 1,40,000/- was paid by the accused as an earnest money and with regard to remaining, it was agreed that the same would be paid at the time of 'Takajul badlain'. Accordingly, the sale deed was executed. Accused has handed over cheque bearing no. 977089000024000 on 15.07.2012 for remaining amount which has been deposited in his account wherefrom it returned back with an endorsement that no such amount is available in the account of



accused. Then thereafter, the complainant has approached the accused persons and complaint which was inappropriately retorted at the end of accused whereupon case has been instituted after serving registered notice.

3. Learned counsel for the petitioner has submitted that from the Chirkut Annexure-3, it is evident that complainant had made endorsement over the same regarding receipt of the balance consideration amount and the same is dated 14.07.2012. Also submitted that from Annexure-4, the photo copy of the statement of account, it is evident that on 16.07.2012, payment was stopped at his end. In the aforesaid background, it has been submitted that as the complainant had already received the balance consideration amount so, the cheque was not honoured as per his direction as complainant tried to deceive him. Also submitted that in the aforesaid background, neither the case under Section 420 IPC nor under Section 138 of the NI Act is made out whereupon, the order of cognizance is fit to be set aside.

4. Learned APP opposed the prayer.

5. The genuineness of Annexure-4 is found under doubt in the background of the fact that there happens to be four endorsements made therein relating to date 16.07.2012. The first one relates to Ganesh Trading, the amount withdrawn has been



shown as 2,50,000/-. Previous to that date, the balance amount was Rs. 40,359.50/- which has been enhanced to Rs. 2,90,359.50, is a matter of concern. In likewise manner, the another endorsement of dated 16.07.2012 which speaks about to stop payment, charge happens to be of Rs. 60/- and then it happens to be Rs. 2,90,419.50/-. It is a matter of surprise that when Rs. 60/- was deducted, how it could be Rs. 2,90,419.50/-.

6. In likewise manner, the third one is with regard to withdrawal by Irfan Mohamad, the amount withdrawn is Rs. 2,00,000/-, but it gone to Rs. 4,90,419.50/- and the fourth one happens to be charge for NEFT customer of Rs. 17/- and it goes to Rs. 4,90,436.50/-. That means to say, the second page happens to be that of another account or is forged one and further it is not at all attested to be true copy of the original by the conducting counsel as required. This happens to be another ground which creates doubt over authenticity of Annexure-4. In the aforesaid background, when the statement of account has properly been scrutinized, it is evident that right from 20.04.2012, there was not amount meeting with the amount for which cheque has been issued. Furthermore, there happens to be no explanation at the end of petitioner as to how the cheque was issued in favour of the complainant and for what purpose. There happens to be



presumption prescribed under NI Act with regard to issuance of cheque and unless and until there happens to be proper rebuttal, the court is bound to consider the same.

7. Consequent thereupon, instant petition lacks merit and is accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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