

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.2068 of 2016

Arising Out of PS.Case No. -93 Year- 2013 Thana -SARAN COMPLAINT CASE District- SARAN

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1. Rajendra Prasad Singh son of Sri Shiv Pujan Singh, resident of Mohalla-
Chandmari Road, P.S. Chapra Muffasil, District- Saran at Chapra

.... Petitioner/s

Versus

1. The State of Bihar

2. Chandra Lekha Devi, W/o Late Birendra Singh, Mohalla- A/20, Prabhu
Nath Nagar, P.S.- Chapra Muffasil, District- Saran at Chapra

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha
Mr. Ram Binod Singh

For the Opposite Party/s (2): Mr. P.K. Sharan
Mr. H.K. Sharan
Mr. J.K. Sharan
Mrs. R. Gandha

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

4 11-09-2018 Heard the learned counsel for the petitioner, O.P. No.
2 as well as the State.

The petitioner seeks quashing of order dated 18.11.2013 passed by learned Judicial Magistrate, Chapra in Complaint Case No. 93 of 2013, whereby the court below has found *prima facie* case against petitioner for offences under Section 406 of the Indian Penal Code and Section 138 of N.I. Act.

Learned counsel for the petitioner has submitted that cheque of Rs. 6 lacs was issued by petitioner to husband of the complainant as security and aforesaid cheque has been misused by the complainant after death of her husband. The complainant has no source of income. As such, it is impossible that complainant can lend



such a huge amount of Rs. 6 lacs to any person as loan.

Learned counsel for O.P. No. 2 has submitted that there is no denial of issuance of cheque of Rs. 6 lacs by petitioner to the husband of complainant, which had bounced on presenting the same in Bank.

The court below after enquiry on the basis of allegation in the complaint petition and S. A. of complainant has found *prima facie* case against this petitioner for offence under Section 138 of the N.I. Act and Section 406 of the Indian Penal Code.

The complainant has alleged in the complaint petition that complainant had given loan to petitioner on several dates between 20.04.2010 to 04.03.2011. It was agreed that money will be returned in installment. At last, a cheque of Rs. 6 lacs drawn on Central Bank, Chapra was given on 1.12.2012 in favour of complainant and the same was deposited in Bank for encashment on 1.12.2012, which was dishonoured on account of insufficient fund. Thereafter, complainant sent legal notice on 12.12.2012 to the petitioner.

The court below is required to see *prima facie* case at the time of holding enquiry.

In the instant case, submission of the petitioner is that he had given blank cheque to complainant. The submission of O.P.



No. 2 is that cheque was given in discharge of debt or liability.

There is no denial that cheque of Rs. 6 lacs bears the signature of the petitioner, which was issued to husband of complainant by the petitioner.

As such, this is disputed question of facts which can only be adjudicated during proper trial. The Hon'ble Supreme Court in case of ***Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited*** reported in ***IV (2016) Banking Cases 416(SC)*** has held that “*while dealing with quashing petition, the Court has ordinarily to proceed on the basis of averments made in complaint. The defence of accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact*”.

In view of such, this court does not find any illegality in the impugned order. Accordingly, this quashing petition is dismissed.

The petitioner is given liberty to raise all the points as raised in this petition at appropriate stage of trial including at the time of framing of charge, which shall be considered by the court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J.)

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