

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4202 of 2014

Arising Out of P.S.Case No. -836 Year- 2012 Thana -SITAMARHI District- SITAMARHI

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Sanjeev Kumar Gupta @ Mantun Prasad, S/O Late Jaggarnath Prasad, Resident Of
Mohalla Court Bazar, Sitamarhi Town, P.S & District- Sitamarhi.

.... Petitioner/s

Versus

1. The State Of Bihar

2. Ram Sevak Sah, S/O Sri Nirsal Sah, R/O Village Sonbarsa, P.S- Sonbarsa, Distt-
Sitamarhi.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Jha, Advocate.

For the State : Mr. Parmeshwar Mehta, A.P.P.

For the Opposite Party/s : Mr. Sachidanand Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 13-02-2018

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the O.P. No. 2.

2. Petitioner seeks quashing of cognizance order dated
19.08.2013 passed by the Judicial Magistrate, 1st Class, Sitamarhi in
G.R. No. 2748 of 2012 (Tr. No. 2906 of 2013) arising out of
Sitamarhi P.S.Case No. 836 of 2012 thereby taking cognizance of
offence under Section 406 of Indian Penal Code.

3. The brief fact giving rise to the case is that
complainant used to purchase food grains from local market and used
to sell to the firm of the petitioner at Sitamarhi and accounting was
used to be done later on and payment was also being made invariably



by the complainant but till the year 1992, a sum of Rs. 6,57,594/- became due over the accused but he could not paid the amount and also snapped the business relationship. Later on, the petitioner/accused gave acknowledgement of receipt of due amount and continued the business relationship, however, that money was not paid so on that basis, this complaint was filed in the year 2009 though the FIR was instituted in the year 2012.

4. Learned counsel for the petitioner submits that there was a business transaction between both sides going over a period of time. The allegation itself reveals that it was a dispute relating to accounting so no *prima facie* case under Section 406 of Indian Penal Code is made out.

5. Whereas learned counsel for the informant submits that during investigation, petitioner accepted the due amount despite that it was not paid, he has also given acknowledgment receipt and promised to pay later on, but finally it was not paid.

6. Having considered rival submissions and on perusal of record, the Court finds that both sides were doing business with each other and from the allegation made in the complaint itself, it appears a dispute of accounting between both sides. To constitute *prima facie* offence of criminal breach of trust, there must be some entrustment of any property with the accused or given dominion over the property



and in such case if that property is dishonestly misappropriated by the accused for his own use or dispossesses that property in violation of any direction of law in the mode such act is to be discharged, only then such offence is attracted. Entrustment means to make somebody responsible for doing something or taking care of something but in the present case, there is no such entrustment rather there was business transaction between both sides over a period of time. The present dispute appears primarily civil in nature, so *prima facie* no offence under Section 406 Indian Penal Code is made out. Therefore, cognizance order dated 19.08.2013 pending in the court of the Judicial Magistrate, 1st Class, Sitamarhi and subsequent criminal proceeding with respect to the petitioner is hereby quashed.

7. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.04.2018
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