

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.27643 of 2015

Arising Out of PS. Case No.-534 Year-2006 Thana- PATNA COMPLAINT CASE District-
Patna

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Dr. Binod Singh son of Late Jagdish Singh, Resident of Mohalla- Ashok
Nagar, Road No. 11, Flat No.- 304, Raja Ram Mohan Roy Apartment, P.S.-
Kankarbagh, District- Patna ... Petitioner

Versus

1. The State of Bihar
2. Smt. Katyani Devi, wife of Brahmdeo Jha, Resident of Katyayni Kutir, J.P.
Lane, Jagat Narayan Road, P.S.- Kadamkuan, District- Patna
... Opposite Parties

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Appearance :

For the Petitioner : Mr. Radha Mohan Singh, Adv.
For the Opposite Parties : Mr. Sanjay Kr. Pandey, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

5 28-03-2018 None appears for opposite party no. 2 even on the
last date also.

Today, again, when the matter taken up, none
appeared for opposite party no. 2.

Considering the fact that the application is pending
since 2015, after perusing the record and after hearing the
counsel for the petitioner I proceed to deal with the matter and
dispose of the matter.

Seeking quashing of an order, dated 28.03.2016,
passed by the Subdivisional Judicial Magistrate, Patna, in
Complaint Case No. 534 (c) of 2006 for offence under Section
420 of the Indian Penal Code.

This application has been filed under Section 438



of the Criminal Procedure Code. Opposite party no. 3, Smt. Katyani Devi, has filed the complaint in question and a perusal of complaint, Annexure 1, goes to show that accused, Dr. Sunil Manohar Deo, had promised admission to her son, Varun Kumar, in management course in Narsi Mohji Institute, Bombay, and it is stated that on instruction of the present petitioner she met Dr. Sunil Manohar Deo, who runs a homeopathic medical college at Balaghat, Nagpur.

According to the complainant, she met Dr. Sunil Manohar Deo. He demanded Rs.1.55/- lakh for securing admission for her son. The amount was paid to him and when the admission was not granted she met and complained to Dr. Sunil Manohar Deo, who returned a sum of Rs.1.55/- lakh vide cheque drawn on ICICI Bank, dated 02.07.2005. bearing cheque no. 736570. The cheque was deposited by the petitioner in her account with the State Bank of India, Kadamkuan Branch, Kadamkuan, Patna, the cheque bounced and making a complaint initially only against Dr. Sunil Manohar Deo, the complaint case was filed, but, subsequently, on 28.03.2006 the name of the present applicant has been added, but, there is no amendment in subsequent allegation against the petitioner is made out. From paragraph 1 of the complaint petition it is evident that the



complainant on instruction of the present petitioner, who is also a homeopathic doctor in Patna, except this bare allegation against the applicant there is nothing in the body of the complaint petition. There is no iota of of any evidence against the present petitioner. On the contrary the entire allegation is against Dr. Sunil Manohar Deo, the demand was made by him for admission and when the son of the complainant did not get admission the money was returned back by Dr. Sunil Manohar Deo through cheque, which bounced. The only allegation against the present applicant is that at his instance the money was given to Dr. Sunil Manohar Deo.

Apart from the aforesaid there is no allegation against the present applicant and as to how this allegation makes out a case under Section 138 of the Negotiable Instrument Act or under Section 420 of the Indian Penal Code against the present applicant. The entire allegation of having transaction made and the bouncing of cheque are against Dr. Sunil Manohar Deo.

In my considered view, mere introduction of the complaint with Dr. Sunil Manohar Deo by the present application is without any material to show as to how and what manner the applicant was instrumental in committing the



offence. No offence against the applicant can be registered, which constitutes offence under Section 138 of the Negotiable Instrument Act or under Section 420 of the Indian Penal Code.

In the result, the order, dated 28.03.2006, passed by the Subdivisional Judicial Magistrate, Patna, in connection with Complaint Case No. 534 (c) of 2006 is **quashed** and this application is **allowed**.

(Rajendra Menon, CJ)

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