

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43751 of 2018

Arising Out of PS. Case No.-3008 Year-2017 Thana- PATNA COMPLAINT CASE District-
Patna

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Abhishek Kumar Singh, aged about 32 years S/o Shri Pritam Kumar Singh
Proprietor of M/S Ganpati Enterprises R/o Tekari Road, Near Pathar Ki
Masjid, P.S. Sultanganj, Town & District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. M/S Pradip Fashions, through its Proprietor Sidharth Agrawal S/o Sri Pradip
Agrawal R/o 244, Road no. 9, Rajendra Nagar, P.S. Kadam Kuan, District-
Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Srivastava Mr. Girish Pandey
For the Opposite Party/s :		Mr. Anil Kumar Singh 1
For O.P. No. 2	:	Mr. Gautam Kejriwal

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 07-09-2018 Heard learned counsels for the parties.

The petitioner is apprehending arrest in a complaint case wherein process has been directed to be issued after cognizance being taken for the offences punishable under Section 406 of the IPC and Section 138 of the N.I. Act.

The prosecution case as per the complaint petition is that the complainant O.P. No. 2 is a wholesale distributor of different types of clothes of different manufacturing companies whereas the accused petitioner is manufacturer and wholesaler of school uniform. The case of the complainant is that he supplied clothes worth Rs.35,04,508/- to the petitioner and the petitioner was ready to pay Rs.26,00000/- and in lieu of the



payment the petitioner handed over six post dated cheques totalling Rs.26,00,000/-. Four cheques of Rs.16,00,000/- were presented and they got dishonoured. Subsequently, legal notices were issued and thereafter the complaint was filed leading to issuance of process after cognizance being taken for the offences punishable under Section 406 of the IPC and Section 138 of the N.I. Act.

On joint prayer of the parties, vide order dated 24.7.2018, the matter was referred to Mediation and Reconciliation Centre, Patna High Court. The report of the Mediator dated 6.9.2018 at Flag 'P' reflects that the issue has been resolved between the parties on payment of Rs.15,00,000/-. Out of the said amount, a bank draft of Rupees Two Lacs has been brought by the petitioner for being handed over to the learned counsel for the complainant and the balance amount of Rupees Thirteen Lacs has been agreed to be paid by the petitioner to the complainant by different post dated cheques and Rupees One Lac Twenty Five Thousand will be paid through demand draft or cash. It is further agreed that in case the cheques are dishonoured, it will invite cancellation of bail bonds of the petitioner, if the petitioner will not make the payment of cheque amount good within one week in cash or through electronic bank transfer.



Thereafter the complainant will return six dishonoured cheques to the petitioner after payment of last installment. The parties also agreed to file joint compromise petition before the learned court below for compounding the three complaint cases pending between the parties. The relevant part of the report of Mediator reads as follows:

“8. That both parties compromised all their dispute with each other with free will and without any threat, coercion or undue influence on the terms and conditions stated herein below:-

(a) Both parties hereto have agreed to settle all their pending dispute regarding outstanding amount against M/S Ganpati Enterprises and M/S Amit Book for a total consideration of Rs. 15,00,000=00 (Rupees fifteen lakhs only) to be paid by the Second Party to the First Party. As such Abhishek Kumar Singh will pay total amount of Rs. 15,00,000=00 (Rupees fifteen lakhs only) to the First Party through Bank Draft/cheques or cash as full and final settlement amount in the manner stated below:-

(i) Up front payment of Rs. 2,00,000/-



(Rupees two lakhs) will be paid by the second party by Bank Draft No. 003905 dated 04.09.2018 Bank of India, Anisabad Branch, Patna -800002 drawn in favour of Pradip Fashion (First Party) before Hon'ble Patna High Court in presence of respectable Advocates on 07.09.2018 at the time of hearing of Cr. Misc. No. 43751/2018.

(ii) The balance Rs. 13,00,000/- (Rupees thirteen lacs) shall be paid by the Second Party to the First Party by different post dated cheque which are detailed as follows:-

Dated cheque	Number of Cheque	Amount
10.10.18	023515	Rs. 50,000=00
10.11.18	023516	Rs. 50,000=00
10.12.18	023517	Rs. 50,000=00
10.01.19	023518	Rs. 50,000=00
10.02.19	023519	Rs. 50,000=00
10.03.19	023520	Rs. 50,000=00
10.04.19	023521	Rs. 3,00,000=00
10.05.19	023522	Rs. 3,00,000=00
10.06.19	023523	Rs. 1,50,000=00
10.07.19	023524	Rs. 1,25,000=00
10.08.19	By D.D. or Cash S.A.	Rs. 1,25,000=00
	Total	Rs. 13,00,000=00



(b) If any of the above said cheques are dishonoured the second party will be responsible to pay the amount so dishonoured within one week in Cash or Electronic Bank Transfer thereafter the First Party will be duty bound to return the said dishonoured cheques against which payments are made.

(c) The parties hereto also agree and undertake that upon payment of last installment of the compromised amount of Rs. 1,25,000/- by way of demand draft/cash the First Party shall hand over then and there all the said six dishonoured cheques to the second party on the very occasion of receipt of such last payment.

(d) The parties hereto further irrevocable agree and undertake that both parties shall ensure immediately that joint compromise petition shall be filed before the learned court below where said complaint cases bearing complaint case No. 3008(c)/2017 and 4459(C)/2017 and C.A. No. 1060/2017 are pending.

(e) That the payment schedule is the essence



of compromise and if the accused shall fail in payment of any installment without any reference his bail bond shall be cancelled by the learned court.

9) That in view of this Compromise petition the parties hereto irrevocably declare that after receiving of compromise amount of Rs. 15,00,000/- (Rupees Fifteen lakhs only) the First Party shall have no claim whatsoever against supply of materials against M/S Ganpati Enterprises and M/S Amit Books till date in future and the Second Party shall not claim against First Party in any manner in future.

10) That both parties shall adhere all the terms and conditions stated above in true sense for end of litigation.

11) That in token of acceptance of compromise both parties put their signature on this compromise petition in presence of their respective Advocates.”

Confirming the aforementioned agreement being arrived at between the parties, a joint affidavit has been filed today by the



parties. Learned counsel for the petitioner has handed over a bank draft of Rupees Two Lacs to the learned counsel for the O.P. No.2 to be handed over to O.P. No. 2. It is expected from learned counsel for the complainant to make endorsement to that effect in the records.

Considering the aforesaid stand of the petitioner, learned counsel for the complainant is not opposing the prayer of the petitioner for anticipatory bail. Accordingly, let the petitioner above named be released on anticipatory bail in the event of arrest or surrender within 12 weeks on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Sub-Judge VII-cum-ACJM, Patna in connection with Complaint Case No. 3008C of 2017 subject to the conditions laid down in Section 438(2) of the Cr.P.C.

Let a copy of Mediation Report along with terms of agreement between the parties be transmitted to the learned Court below.

(Dinesh Kumar Singh, J)

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