

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33952 of 2015

Arising Out of PS. Case No.-1231 Year-2005 Thana- PATNA COMPLAINT CASE District-
Patna

=====

Tarun Kumar Agarwal son of Radhey Shyam Agarwal, resident of C.B. 86, Salt Lake City, Kolkata-64, the Managing Director of M/S Chandawat Udyog (Cylinders) Ltd. a company incorporated under the Indian Companies Act, 1956, having its head office at 154, Cotton Street, Kolkata-7
... .. Petitioner/s

Versus

1.The State Of Bihar
2. The Bihar State Credit and Investment Corporation Ltd. having its registered office at 4th Floor, Indira Bhawan R.C. Singh Path, P.S. Sri Krishnapuri, Dist. Patna.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad
For the Opposite Party/s : Mr. M.K. Khare (App)

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date : 03-08-2018

This petition under Section 482 Cr. P. C. has been filed for quashing the order dated 24.5.2005 passed by learned J.M. 1st Class, Patna, in complaint case no. 1231(M) of 2005, by which learned Magistrate has found *prima facie* case for the offence under Sections 420, 406 and 409 of the IPC and Section 138 of the Negotiable Instruments Act, 1881 against the petitioners.

Heard learned counsel for the petitioner, learned counsel



for the informant and learned counsel for the State.

Learned counsel for the petitioner has submitted that instant case has been filed for bouncing of one cheque bearing no. 690510 dated 23.3.2005, issued by the petitioner to the complainant for a sum of Rs. 6,00,000/- (six lacs) towards payment of the loan amount under one time settlement Scheme, 2004 (for short 'the OTS Scheme, 2004). Learned counsel for the petitioner has further submitted that OTS scheme,2004 bonafidely given to the petitioner was withdrawn by the opposite party no.2-complainant for non- compliance of the agreement and thereafter petitioner had filed a writ in this Hon'ble Patna High Court vide C.W.J.C. No. 104 of 2006 and this Hon'ble Court vide order dated 21.03.2007 has passed final order directing the opposite pay no.2 to issue no dues certificate in favour of the petitioner within a period of one weeks from the date of production/communication of the order as well as discharge the mortgaged property of the petitioner within one week, since the petitioner has paid the entire amount of Rs. 92.2 lacs towards final settlement. Learned counsel for the petitioner submits that for delayed payment of the amount after order passed by the Hon'ble High court the interest was levied by the opposite party no.2, and, in compliance of demand issued by



General Manager of opposite party no. (Anexure-6), the petitioner has made full payment of Rs, 12,75,897/- in one stroke vide Annexure-7 to the supplementary affidavit. But, no Dues Certificate has not been issued and further interest is being claimed by the opposite party no.2 in terms of letter no. 286 dated 4.9.2015 which is annexed as Annexure B to the counter affidavit filed on behalf of the opposite party no.2

This Court finds that opposite party no.2 has made allegation in complaint petition that petitioner was given term loan of Rs. 83.33 lacs. The petitioner has submitted post dated cheque towards payment of dues under the OTS scheme 2004 as announced by the opposite party no.2. It is further alleged that out of the said cheque complainant presented cheque no. 690510 dated 23.3.2005 for a sum of Rs. 6,00,000/- (six lacs) only for clearance through its Bank Oriental Bank of Commerce, Kolkata and the aforesaid cheque was not honored and was returned back with an endorsement "insufficient balance". Thereafter, complainant sent a legal notice to the petitioner but the petitioner did not make payment of the aforesaid cheque amount within the stipulated time leading to the filing of instant case by the complainant.

The learned court below has after holding enquiry



found *prima facie* case against this petitioner for the offence under Section 138 of the N.I. Act read with sections 420, 406 and 409 of the IPC.

Learned counsel for the opposite party no.2 is present. He has not denied the facts as stated below. Petitioner approached the opposite party no.2 for settlement under OTS Scheme 2004. The opposite party no.2 agreed for settlement under OTS Scheme, 2004. The petitioner was asked to make full and final payment of Rs. 92.02 lacs towards final settlement. Copy of the OTS settlement amount calculated by the opposite party no.2 dated 09.11.2004 is annexed as Annexure-2 with the application. The OTS facility granted to petitioner was subsequently withdrawn by the complainant which was challenged by petitioner before this Hon'ble High Court in CWJC no. 104 of 2006. This Court, vide order dated passed in CWJC No. 104 of 2006, directed the petitioner to deposit Rs. 5 lacs every month beginning from April, 2006 by demand draft. The petitioner, accordingly, started making payment of Rs. five lacs every month and has paid the entire OTS amount of Rs. 92.02 lacs which, the petitioner's company was needed to pay under OTS scheme. The writ petition was, accordingly, disposed of by order dated 21.3.2007 with a direction to



opposite party no.2 to issue No Dues Certificate in favour of the petitioner's company within a week and discharge mortgage assets. Thereafter the opposite party no.2 preferred Letters Patent Appeal being LPA No. 375 of 2007 which was dismissed by order dated 02.05.2007 with observation to file a review application. The opposite party no.2 has filed a review application being Civil Review no. 120 of 2007 which also got dismissed vide order dated 26.9.2008. The copy of the said order is annexed as Annexure-4.

In that view of the matter, the entire dues of opposite party no.2 has been paid by the petitioner which also finds reference in order of this Court dated 21.3.2007 passed in C.W.J.C. No. 104 of 2006. The opposite party no.2 was directed to issue No Dues Certificate in favour of the petitioner's company and discharge his mortgage assets. It appears from the supplementary affidavit filed on behalf of the petitioner that No Dues Certificate has not been issued till date. The opposite party no.2 is demanding payment of further interest amount in terms of Annexure-B to the counter affidavit filed on behalf of the opposite party no.2.

This Court is of the view that further demand of interest amount as mentioned in Annexure-B is separate issue not



connected with the instant criminal proceeding. The instant criminal proceeding was initiated by opposite party no.2 mainly for non- clearance of the cheque bearing no. 690510 dated 23.3.2005 issued by the petitioner to informant for a sum of Rs. 6,00,000/- towards payment of the loan amount under OTS Scheme, 2004. From the order dated 21.3.2007 passed by this Hon'ble Court in CWJC No. 104 of 2006, it is apparent that in terms of the OTS Scheme, 2004 the petitioner has paid the entire amount of Rs.92.02 lacs to opposite party no.2 which also included the amount of Rs. six lacs which is said to be amount of cheque which got bounced and subject matter in the instant complaint petition.

Therefore , this Court feels that no cause of action is left to the opposite party no.2 after the petitioner has already paid the entire amount of Rs. 92.02 lacs under the OTS Scheme, 2004.

Therefore, the continuance of the instant proceeding against the petitioner will be mere harassment to him and abuse of the process of law.

Accordingly, the impugned order dated 24.5.2005 passed by learned J.M. 1st Class, Patna, in complaint case no. 1231(M) of 2005, along with entire proceeding against the petitioner is



hereby quashed.

This Cr. Misc. application is allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/AFR	AFR
CAV DATE	N/A
Uploading Date	18.8.2018
Transmission Date	18.8.2018

