

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40460 of 2013

Arising Out of PS. Case No.-2825 (C) Year-2011 Thana- PATNA COMPLAINT CASE
District- Patna

-
1. M/S Assembly Of Elite Guards, A Proprietorship Concern, Represented Through Its Proprietor Capt. Mrinal Kanti Chakraborty, Having Its Office At R.S. Tower, No. 2, Airport Gate, 675 Pandit Motilal Colony, Ambagan, P.O.-Rajbari, Kolkata-700081
 2. Capt. Mrinal Kanti Chakraborty, Proprietor M/S Assembly Of Elite Guards, A Proprietorship Concern, Having Its Office At R.S. Tower, No. 2, Airport Gate, 675 Pandit Motilal Colony, Ambagan, P.O.-Rajbari, Kolkata-700081

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Vinay Kumar Singh Son Of Late K.D.N. Singh Office At Room No. 401, Shashi Complex, Exhibition Road, Patna-800001

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	None
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Opposite Party No. 2	:	Mr. Shailendra Kumar with Mr. Md. Nadim Seraj, Advocates.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 28-11-2018

Nobody appears on behalf of the petitioners. The Court has heard learned A.P.P. for the State and learned counsel for the opposite party no. 2.

2. The petitioners have moved the Court for the following reliefs:

*“ That the instant application is being filed
for quashing the order dt. 17.01.2012
passed in Complaint Case No. 2825*



(C)/2011 by the learned Judicial Magistrate, 1st Class, Patna taking cognizance for the offences under sections 406 and 420 of I.P.C. and section-138 of N.I. Act against both the petitioners here, which is wholly without jurisdiction and no cause of action has arisen at Patna.”

3. The petitioner no. 1 had appointed the opposite party no. 2 who acts as an agent for supply of Guards to various institutions. As per the agreement, certain royalty was to be given by the opposite party no. 2 to the petitioners and the petitioners were to take care of E.P.F., E.S.I, T.D.S. and Service Tax to the Government.

4. As per the contention of the opposite party no. 2 in the complaint, the cheque issued by the petitioners amounting to Rs. 4901203.31 was not encashed due to paucity of funds and notice given to the petitioners to make good the same was also not complied with. The court below has taken cognizance against the petitioners under Sections 406 and 420 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act.

5. The ground taken in the application is that the said cheque which was presented was fraudulently done as blank signed cheques were left with the opposite party no. 2



and which was to be filled up on the basis of the actual expenses and after prior permission from the petitioners, which was not done. It is the further stand of the petitioners that the complaint filed at Patna suffers from gross jurisdictional error, inasmuch as the cheque was presented in the Bank of the opposite party no. 2 at Ghaziabad and the Bank on which it was drawn is located at Kolkata and furthermore, the legal notice sent on behalf of the opposite party no. 2 was from the learned counsel based in Ghaziabad in the State of Uttar Pradesh. It was thus the contention that purely from the legal point of view, no cause of action or even part of it having arisen in the State of Bihar muchless in Patna, the complaint case was not maintainable.

6. Learned A.P.P. fairly submitted that the order taking cognizance suffers from jurisdictional error.

7. Learned counsel for the opposite party no. 2 submitted that the agreement between the parties was entered into at Patna and the Bank of the petitioners was also located in Patna and, thus, the local court at Patna has the jurisdiction. However, on a query of the Court as to how the agreement and the location of the Branch has any bearing on the present issue inasmuch as the allegation relates only to the cheque not being



honoured, especially in the background that the same was presented at Ghaziabad and drawn on the Bank located at Kolkata, learned counsel for the opposite party no. 2 was not in a position to explain or satisfy the Court with regard to the local court of Patna having jurisdiction in the matter.

8. For the reasons aforesaid, the application succeeds. The order dated 17.01.2012 passed in Complaint Case No. 2825 (C) of 2011 by the Judicial Magistrate, 1st Class, Patna taking cognizance of offence under Sections 406 and 420 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act against the petitioners stands quashed.

9. It goes without saying that as the Court has interfered purely on the legal ground of jurisdiction, the opposite party no. 2 shall be at liberty to pursue his remedy before the appropriate forum, in accordance with law.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	
U	
T	

