

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42616 of 2014

Arising Out of PS. Case No.-816 Year-2011 Thana- BHABHU(KAIMUR) COMPLAIN C
District- Bhabhua (Kaimur)

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1. Mukesh Kumar Mishra Son of Rameshwar Mishra Resident of Central Revenue Colony, Ashiana Nagar, Patna-800025
 2. Manish Kumar Sinha Son of Girish Nandan Prasad Resident of Flat No.303, Awadh Kunj Apartment, Kachhi Talab, Gardanibagh, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Varun Kumar Singh Son of Lakshmi Singh Resident of-Mauza-Jalalpur, P.S.-Bhabhua, District- Kaimur (Bhabhua) at present Gandhi Kusth Niwaran Pratisthan Gandhi Gram, Bhabua, P.S.-Bhabua, District-Kaimur (Bhabua).

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Radha Mohan Pandey, Advocate.

For the Opposite Party/s : Mr. Nirmal Kumar Sinha (App)
Mrs. Shashi Bala Verma, Advocate.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 10-05-2018

Heard learned counsel for the petitioners and learned counsel for the O.P. No. 2.

2. Petitioners seek quashing of cognizance order dated 24.11.2011 passed by learned Chief Judicial Magistrate, Bhabua, Kaimur in Complaint Case No. 816 of 2011 thereby taking cognizance of offence under Sections 406 and 420 of the Indian Penal Code as well as Section 138 of the Negotiable Instrument Act.



3. Brief fact giving rise to the case is that complainant -O.P. No. 2 of this application filed complaint against five persons levelling allegations that petitioners along with other co-accused came at Gandhi Kusth Niwaran Pratisthan, Bhabua and Manish Kumar Sinha introduced them and told that if he is ready to work as petty contractor of Trident Control Private Limited, he would get handsome money and likely to earn Rs. 2,35,000/- per month. The complainant agreed to the proposal and as a security in total paid Rs. 8 lacs by cheques and R.T.G.S. instrument to Trident Control Private Limited. The agreement paper got signed and complainant inquired about time frame after which he would get payment of Rs. 2,35,000/- per month, but the accused persons said that whatever money would be fixed only that would be paid to him. So complainant asked them to return back Rs. 8 lacs earlier paid by him. Pankaj Kumar Malviya, one of the accused-service provider of Trident Control Private Limited, issued a cheque of Rs. 8 lacs in favour of the complainant, which got bounced after presentation in the bank. Even after service of notice, money was not returned back and the allegation is that all the accused persons having conspired together cheated the complainant.

4. Learned counsel for the petitioners submits that petitioners are not in any way related with Trident Control Private



Limited, only allegation is that petitioner no. 2 introduced the complainant to Pankaj Kumar Malviya and others. Money was paid by the complainant, as per the allegation, by cheques and many other instruments to Trident Control Private Unit and not to the petitioners and cheque was also not issued by the petitioners to the complainant rather issued by Pankaj Kumar Malviya, representative of Trident Control Private Limited, so in no way petitioners are concerned with the transaction for the agreement proposed to be entered in between complainant's son and Trident Control Private Limited. He further submits that no any inducement was given by the petitioners to the complainant and delivery of money was not given to the petitioners. There is no ingredient of breach of trust being made out against the petitioners because money was deposited by the complainant in the account of Trident Control Private Limited and its Managing Director and representative, Pankaj Kumar Malviya is accused in this case and the petitioners have not misappropriated the amount deposited with the Trident Control Private Limited as such no case of breach of trust is made out against them.

5. Learned counsel appearing on behalf of the O.P. No. 2 submits that petitioners induced the complainant to enter into agreement so he made payment of Rs. 8 lacs to Trident Control



Private Limited for running a mobile medical unit, even the agreement was prepared, which is Annexure-A of the counter affidavit, but it was not signed by its Managing Director, one of the co-accused of this case and few cheques were received by Mukesh Kumar issued in favour of Trident Control Private Limited.

6. In reply to that, learned counsel for the petitioners submits that these cheques were never received by the petitioners. There is no signature of the petitioner no. 1 acknowledging receipt of the cheque rather accepted by Mukesh Kumar whereas name of the petitioner is Mukesh Kumar Mishra and this document was also not produced before the court below at the stage of inquiry.

7. Learned counsel for the State submits that *prima facie* case of cheating and breach of trust is made out against the petitioners also.

8. Having considered the rival submission and on perusal of record, it is apparent that agreement was to be signed by Trident Control Private Limited through its Managing Director and Sri S.M.Krishna Prasad, one of the accused in complaint and Bishwajit, son of the complainant. Only allegation transpires against the petitioner no.1 is that he introduced the complainant to the representative of Trident Control Private Limited and others. It



is an admitted position that altogether Rs. 8 lacs was paid by the complainant to Trident Control Private Limited by banking instruments and in order to return back the said amount, cheque was Pankaj Kumar Malviya, a co-accused, an authorised representative of Trident Control Private Limited, so in the said backdrop of fact even the allegation against the petitioners are taken into entirety the act of the introduction of the complainant with the representative of the Trident Control Private Limited does not amount to inducement by the petitioners rather the agreement for running the proposed mobile medical unit was in between complainant and Trident Control Private Limited. Petitioners in no way have gained wrongfully any amount or misappropriated because money was not entrusted to them, hence the entire conspectus of the fact, as alleged in the complaint, also do not constitute any offence of breach of trust against these two petitioners. The entire transaction was done by the complainant by instrument of cheques and R.T.G.S. to the account of Trident Control Private Limited.

9. So for the aforesaid reasons, the Court does not find any *prima facie* evidence of cheating and breach of trust being made out against these two petitioners, therefore, the impugned order taking cognizance and subsequent criminal proceedings



pending against the petitioners would be abuse of the process of the court.

10. Hence the impugned order dated 24.11.2011 passed by learned Chief Judicial Magistrate, Bhabua, Kaimur in Complaint Case No. 816 of 2011 as well as subsequent criminal proceedings only with respect to the petitioners is hereby quashed. The application stands allowed.

(Arun Kumar, J)

sujit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.05.2018
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