

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41077 of 2013

Arising Out of PS.Case No. -1941 Year- 2006 Thana -PATNA COMPLAINT CASE District-
PATNA

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Hari Krishna Thakur Son Of Sanmukh Thakur Resident Of Sanmukh Sadan, 09
Nandanpuri, Khajpura, P.S. - Shastri Nagar, District & Town Patna

.... Petitioner.

Versus

1. The State Of Bihar
2. Lallan Sharma Son Of Late Kameshwar Singh Resident Of In Sarswati Niwas,
Flat No. 306, Rajendra Nagar, Road No. 12 Town And District Patna, Proprietor Of
M/S Goswami Developers (Pvt.) Lmt. Whose Office Is Situated At Abhay Bhawan,
2nd Floor Apna Ghar Frazer Road, Patna-800001

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Ram Vinay Singh @ Sanjay, Adv.
For the State : Mr. Ram Naresh Rai, APP.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 27-03-2018

1. Heard learned counsel for the petitioner and the State.

2. Though notice on opposite party No. 2 has validly been served and name of counsel for the opposite party No. 2 is appearing in daily cause list but today at the time of hearing of this petition, no one appears in court on behalf of opposite party No. 2.

3. This petition has been filed for quashing the order dated 13-12-2006 passed by Shri Shaheb Kumar, learned Judicial Magistrate-Ist Class, Patna in Complaint Case No. 1941C of 2006 whereby and whereunder learned Magistrate has found prima facie case against the petitioner for the offence under Section-420 of the



Indian Penal Code and Section-138 of N.I. Act.

4. Counsel for the petitioner has submitted that impugned order is bad in law as well as on facts. Counsel for the petitioner has submitted that the petitioner is a businessman of construction of Multi Storied building in the name and style as M/S Goswami Developers PVT. Ltd. In the year, 2002, the complainant contacted the petitioner for construction work on his plot measuring 7 Kathas in road No. 12, Rajendra Nagar, Patna.

5. During negotiation, the complainant knew that the land in dispute belongs to mother of accused Seema Thakur. Sarswati Patel executed a sale deed in favour of her daughter Seema Thakur on 22-06.1987. On 30-06-2002, an agreement was executed between the co-accused Seema Thakur and the complainant for development of the aforesaid plot as a multi storey building and as per agreement, 38% share of the constructed building was to be given to the co-accused Seema Thakur. The petitioner was also a witness on the agreement. The petitioner received a legal notice in the month of June, 2002 due to non-encashment of a cheque of Rs. 50,000,00/- (fifty lakhs) issued by the petitioner. The petitioner inquired into the matter and gave reply to the legal notice that he has not issued any cheque to the complainant. Counsel for the petitioner has annexed the Xerox copy of aforesaid cheque as Annexure-3 which was returned by the bank



with an endorsement “signature on the cheque is incomplete”.

6. Learned counsel has pointed out by drawing attention of this court to Annexure-3 that the cheque is dated 30-02-2006. The month of February never contain of 30 days. The petitioner has signed in the bottom of the cheque and in the column of drawee also, name of petitioner has been mentioned. The figure 40 lac has been cut modified as 50 lac. It has been submitted that such forgery has been made by complainant to harass the petitioner who is 90 years old person lying in bed. The court below without appreciating the facts of this case, only on the basis of SA of the complainant and statement of other witnesses found prima facie case against the petitioner for the offence under Sections-403, 420 of the Indian Penal Code and 138 of N.I. Act.

7. The case in brief as per complaint petition filed by the complainant is that he used to do construction business in the name and style as “M/S Goswami Developers PVT. Ltd.”. He contacted the petitioner in the year, 2002 for construction work on his plot measuring 7 Kathas of land situated at Rajendra Nagar, Patna. The complainant assured during negotiation that the land belongs to mother of co-accused, Seema Thakur on which, dues of Rs. 79 lakhs stand against the loan, taken by her father. The land owner Sarswati Patel executed sale deed in favour of her daughter Seema Thakur on



22-06-1987. The agreement was executed on 30-06-2002 between the complainant and Seema Thakur (co-accused) for development of aforesaid plot measuring 7 Kathas of land situated at Rajendra Nagar, road No. 8, Patna. As per agreement, the complainant would be free to set off the amount paid to the bank by selling part of 38% of share of the accused persons in the flat.

8. The Bank of Baroda settled the dispute on payment of approximately Rs. 28 lakhs which was paid by the complainant. Thereafter, the complainant started construction work after getting the map sanctioned by the authority. Besides the aforesaid payment to the Bank, the complainant also gave Rs. 50,000,00/- (fifty lakhs) to the accused persons for meeting the expenses. As per agreement, the complainant gave proposal to accused persons to realize money after selling portion of flats out of the 38% of the share of flat of accused persons. Hari Krishana Thakur (petitioner) assured the complainant to pay back the dues. He issued cheque No. 985401 dated 30-02-2006 for a sum of Rs. 50,000,00/- (fifty lakhs) which could not be encashed. The cheque was returned with a slip dated 12-05-2006 by Bank of Baroda. The complainant sent legal notice to the accused persons. The petitioner gave reply to the said notice through his lawyer by letter dated 23-06-2006 denying about issuance of any cheque by him.



9. Counsel for the petitioner has submitted that totally wrong statement has been made by the complainant in para-10 of the complaint that the cheque was returned on 12-05-2006 with endorsement “insufficient fund”. Counsel for the petitioner has drawn attention to the court to Annexure-3 which is Xerox copy of the cheque along with the return memo of the bank clearly mentioning that drawee signature is incomplete.

10. As mentioned above, the cheque which is alleged to have been issued by the petitioner in favour of complainant itself appears to be not genuine. From bare perusal of aforesaid Xerox copy of cheque annexed as Annexure-3, it appears that the cheque is dated 30-02-2006 and in the month of February, 30th days never come. It further appears in the column of the payee, name of this petitioner is mentioned and in the bottom of the cheque also, the name of petitioner has been mentioned. It further appears that interpolation has been made in the cheque. The word forty lac has been cut and modified as fifty lac. From the complaint petition, it appears that agreement was entered into between daughter in law of the petitioner namely Seema Thakur and the complainant on 30-06-2002. It is also mentioned in the complaint that the land belongs to the mother of Seema Thakur who executed sale deed in favour of Seema Thakur on 22-06-1987. As such, from the complaint petition itself it appears that



the petitioner was not land lord of aforesaid property. He merely signed as a witness on the deed of agreement executed between the complainant and Seema Thakur,

11. Therefore, from such allegation in the complaint petition and also the facts which appear after looking into Xerox copy of the cheque and cheque return memo which has been annexed as Annexure-3, this court finds that there is no ingredient of Sections-403 & 420 of the Indian Penal Code and Section-138 of N.I. Act.

12. Therefore, the impugned order dated 13-12-2006 passed by Shri Shaheb Kumar, learned Judicial Magistrate-Ist Class, Patna in Complaint Case No. 1941C of 2006 along with entire criminal proceeding against the petitioner is hereby quashed.,

13. Hence this Cr. Misc. Application is *allowed*.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	03-04-2018
Transmission Date	03-04-2018

