

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1788 of 2019

Arising Out of PS. Case No.-2412 Year-2012 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

=====

Rajeshwar Prasad, son of Ramnagina Prasad, Resident of Harnathpur, Police Station - Pakri Dayal, District - East Champaran. Present Address-Sri Ram Steel and Crockery House Abhimanu Complex, Panch Mandir Road, Police Station - Town P.S., District - Motihari, East Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr Bihar
2. Nand Kishore Prasad Late Rajendra Prasad Resident of Mohalla - Teliyapatti, Gyan Babu Chowk, Ward No.3, Bhawani Mandap Road, Police station - Town P.S. District - Motihari.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Kumar Dharendra Pratap Singh
For the Opposite Party/s : Mr. Ashok Kumar Singh 1

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 01-02-2019 Heard learned counsel for the petitioner as well as learned
Additional Public Prosecutor.

Petitioner has challenged the order dated 03.04.2018, whereby and whereunder the learned lower Court has framed charge against the petitioner for an offence punishable under Section 406, 420 of the I.P.C. and Section 138 of the N.I. Act relating to Complaint Case No.C-2412 of 2012, Trial No.800 of 2016.

It has been submitted at the end of the petitioner that from the previous order sheet, it is evident that in spite of giving sufficient opportunity to the complainant to adduce evidence before charge in accordance with Section 244 of the Cr.P.C., the complainant had produced only one witness on 13.10.2017, who was also incompetent



on account of his mental inability as has been perceived by the Court, so evident vide order dated 13.10.2017. Save and except PW-1, non-appeared. Referring evidence of PW-1 (Annexure-5), it has been submitted that there happens to be no ingredients coming out from his deposition to substantiate framing of charge under Section 406, 420 of the I.P.C., though to some extent Section 138 of the N. I. Act survives. Furthermore, it has also been submitted that as per direction of the High Court, so given at the time of approaching by the petitioner for grant of bail, petitioner had already paid the amount and in the aforesaid background, the conduct of the complainant happens to be natural one by way of abstaining himself from the proceeding. If that part is taken into consideration, then in that circumstance, the whole proceeding be quashed.

Learned Additional Public Prosecutor objected and submitted that at the present moment the materials whatever been collected and appreciated by the learned lower Court is to be considered. From the evidence of PW-1, it is evident that there happens to be specific disclosure that Nand Kishore Prasad had given Rs.86,500/- to one person, who had not returned the money and further, Rajeshwar Prasad had given the cheque, which was dishonoured. So, even considering that the evidence did not satisfy the ingredients of Section 420 I.P.C., speaks about proper identification of Section 406 of the I.P.C.

Heard both sides and gone through the record. From the



record, it is apparent that only one witness has been examined before charge. After going through Annexure-5, it is evident that there happens to be specific disclosure at the end of the PW-1, that Nand Kishore Prasad had given Rs.86,500/- to one person, who had not returned the money. Rajeshwar Prasad had given cheque and the same was dishonoured by the bank.

That being so, for the present, the evidence satisfy the ingredients of Section 406 I.P.C. as well as Section 138 of the N. I. Act to the extent of justifying framing of charge under aforesaid Sections. However, Section 420 I.P.C. is not found to be duly substantiated from the evidence of PW-1, as a result of which, to that extent this petition is found maintainable, whereupon framing of charge by the learned lower Court with regard to Section 420 I.P.C. is struck down. Petition to that extent is allowed.

However, it is made clear that if during course of evidence U/s 246 Cr.P.C., the evidences are being adduced to attract Section 420 I.P.C., then in that circumstance, the learned lower Court will be at liberty to frame charge in terms of Section 216 of the Cr.P.C.

(Aditya Kumar Trivedi, J)

vikash/-

U		T	
---	--	---	--

