

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15084 of 2015

Arising Out of PS. Case No.-595 Year-2007 Thana- BUXAR COMPLAINT CASE District-
Buxar

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Kamla Prasad, son of Late Ganga Phal Prasad @ Ganga Phal Sah, resident of
Village- Nauwan, P.S.- Krishna Bramh, District- Buxar.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Barmeshwar Singh, son of Late Ram Govind Singh, resident of Village-
Nauwan, P.S.- Krishna Bramh, District- Buxar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Malay Kumar Choudhary, Advocate
		Mr. Ravi Ranjan, Advocate
For the Opposite Party/s :		Mr. Shyam Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 13-09-2019

Heard learned counsel for the petitioner. No one appears on behalf of opposite party No.2, complainant of the case, though *Vakalatnama* has been filed.

2. Petitioner has challenged the order of cognizance dated 15.10.2009 passed by the learned Judicial Magistrate, Buxar in Complaint Case No.595 C of 2007.

3. Learned counsel for the petitioner informs that complaint case is still pending and it has not been disposed of. However, charges have already been framed and after charge prosecution evidence was going on. Learned counsel further submits that framing of the charge would not change the situation



if, a bare perusal of the complaint petition does not disclose commission of a criminal offence.

4. By the impugned order, cognizance has been taken for the offence under Section 418 of the Indian Penal Code. According to complaint petition, the petitioner had taken loan from the complainant of *Rs.50,000/- (Rupees Fifty Thousand)* to be invested in his business. The petitioner had executed a receipt of the same, however, after several demands the petitioner did not refund the money. The statement of the complainant on oath would reveal that the complaint case was filed for recovery of the said *Rs.50,000/- (Rupees Fifty Thousand)* from the petitioner.

5. Submission is that a case of pure civil dispute is made out as each and every non-refund of the loan amount does not attract ingredient of dishonest and fraudulent intention. Different reasons may be there for non-refund of money, including failure of the business, wherein money was invested. Hence, the criminal offence alleged is apparently not made out. The civil remedy to the complainant is already there.

6. I find substance in the submission of the learned counsel for the petitioner. The complaint petition apparently does not disclose fraudulent and dishonest intention of the petitioner at the time of inception of the dealing between the parties. Hence,



in my view continuance of criminal proceeding would amount to abuse of process of the court. Accordingly, the same stands, hereby, *quashed*. This application is *allowed*.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
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