

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 23717 of 2019

Arising Out of Case No.-2107 Year-2018 Thana- MUZFFARPUR COMPLAINT CASE
District- Muzaffarpur

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Chandeshwar Chaudhary, aged about 62 years, sex-male, Son of Late Bisundev Chaudhary, House No.-E1-14, Mohalla- Alkapuri, Bhagwanpur, P.S.- Sadar, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Ajay Kumar, aged about 40 years, sex-male, Son of Shivjee Singh Resident of Mohalla - Panchvati, Shivnagar, Rewa Road, Bhagwanpur, P.S.- Sadar, District- Muzaffarpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Yugal Kishore and Ms. Rupa Kumari, Advocates
For the State	:	Mr. Md. Arif, APP
For the O P No. 2	:	Mr. Pankaj Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 08-08-2019

Heard learned counsel for the petitioner; learned APP for the State and learned counsel for the opposite party no. 2, who has appeared after notice.

2. The petitioner apprehends arrest in connection with Complaint Case No. 2107 of 2018 dated 03.08.2018 instituted under Sections 420 and 406 of the Indian Penal Code and 138 of the Negotiable Instruments Act, 1881.



3. The accusation against the petitioner and his father is that they had come to the shop of the complainant-opposite party no. 2 and had purchased cloth after giving part payment in cash and for the rest, the son of the petitioner had given two cheques in favour of the opposite party no. 2. It was submitted that later on, the petitioner and his son took loan of Rs. 1,50,000/- for which cheque of Rs. 1,60,298/- was given which was not honoured.

4. Learned counsel for the petitioner submitted that the petitioner admittedly has not issued the cheque. It was further submitted that from the complaint itself, it is clear that there was business dealing with the parties and whatever money is alleged to have been taken by the petitioner was in the course of business dealing. Thus, it was submitted that the transaction being commercial in nature and relating to money, the course available to the opposite party no. 2 was only to file money suit before the civil Court of competent jurisdiction and filing of a complaint/criminal case is an abuse of the process of the Court.

5. Learned APP and learned counsel for the opposite party no. 2 submitted that against the petitioner, there are more complaint cases which has not been disclosed in the present application.



6. At this juncture, when the Court called upon learned counsel for the petitioner to explain such suppression of fact by him, it was submitted that the said cases are complaint cases in which till date, he has not received any summon and, thus, he is unaware of any such pendency and only today he has also been made aware of the same on the basis of submissions made by learned counsel for the opposite party no. 2.

7. Having considered the fact and circumstances of the case and submissions of learned counsel for the parties, the application is allowed.

8. The provisional bail granted to the petitioner by order dated 16.04.2019, stands confirmed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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