

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1205 of 2017

Arising Out of PS. Case No.-544 Year-2015 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

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Bishnu Prasad Jaiswal @ Vishnu Prasad Jaiswal Son of Late Baban Prasad Jaiswal At Present Resident of Mohalla-Utarwari Pokhra, Ward No. 6, Bettiah, POlice Station-Bettiah Nagar, District-West Champaran Bettiah, Permanent Address-Resident of Village-Machchhargawan, Police Station-Yogapatti, District-West Champaran Bettiah

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Kishori Lal Jaiswal, Son of Late Ramlal Sah, Resident of Mohalla-Kalibagh, Ward No.3, Bettiah, Police Station -Bettiah Nagar, District-West Champaran Bettiah

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Lokesh Kumar Singh
For the Opposite Party/s : Mr. Aditya Narayan Singh-1

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 25-01-2019 Heard learned counsel for the petitioner as well as

learned Additional Public Prosecutor.

Petitioner has asked for quashing of the order dated 21.04.2016 passed by Sri N. P. Singh, Judicial Magistrate, 1st Class, West Champaran at Bettiah in Complaint Case No.544C of 2015, Trial No.3225 of 2016 (Kishori Lal Jaiswal v. Vishnu Prasad Jaiswal) whereby and whereunder petitioner has been summoned to face trial for an offence punishable under Section 417, 504 of the I.P.C.

Before coming to facts of the case, it looks appropriate to incorporate the Para-10 of the petition wherein



there happens to be an admission at the end of the petitioner in following way:-

“10. That the petitioner clearly and specifically denied that he has ever received Rs.10,000/- from the complainant by way of friendly loan. On the contrary, the petitioner has purchased various goods on credits from the shop of the complainant and was not paying for the same. It is apprehended that in order to misappropriate the amount of the petitioner the present case has been filed.”

Although, neither the statement of the witnesses has been furnished nor the S.A. in order to trace out whether all of them have supported the case of the prosecution or not. However, the facts of the case as per complaint is that both the parties are known to each other and in the aforesaid background, petitioner/ accused succeeded in getting Rs.10,000/- from the complainant/ O.P. No.2 on an assurance that by next month the same will be returned back. As the aforesaid amount was not returned back, whereupon complainant along with his son had gone to the place of petitioner, who blatantly refused and further, abused. On protest, there was push and pull.

From the order impugned, it is evident that the learned lower Court after going through S.A. as well as statement of three witnesses found a prima facie case, whereupon took



cognizance and summoned the petitioner.

Whether the High Court could scrutinize with the order of the summoning by substituting the satisfaction of the trial Court, has been deprecated by the Apex Court in ***Prabhu Dutt Tiwari vs. State of Uttar Pradesh and others reported in (2018) 13 SCC 609***, wherein it has been held:-

“3. At the stage of summoning the accused on the basis of a private complaint, all that is required is a satisfaction by the Magistrate that there is sufficient ground to proceed against the accused in the light of the records made available and the evidence adduced by the complainant.

4. Having gone through the order passed by the Magistrate, it is fairly clear that there has been the required satisfaction. The discussion by the High Court would give an indication that the Magistrate had to appreciate the evidence and then enter a finding as to whether the accused are guilty or not. At the stage of summoning, as already stated above, the satisfaction required for the Magistrate is only to see whether there is sufficient ground to proceed against the accused.

5. Such a satisfaction for summoning an accused having been made out, the High Court went wrong in interfering with the summoning order. It was too early



*for the High Court to enter a finding otherwise. The
impugned order is, hence, set aside. The appeal is
allowed.”*

Accordingly, instant petition sans merit and is
dismissed.

(Aditya Kumar Trivedi, J)

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