

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10016 of 2015

Arising Out of PS. Case No.-2596 Year-2012 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

Dinesh Chandra Thakur, son of Babulal Thakur, Resident of village- Belsand,
Near Registry Office, P.S.- Belsand, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Dinesh Prasad, son of Late Shivdhani Prasad Bhagat, Resident of village and
P.O.- Bhikhanpur, P.S.- Ahiyapur, District- Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Prakash Chandra, Adv.
For the O.P. No. 2	:	Mr. Sunil Kr. Verma, Adv.
For the State	:	Mr. Amrendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

8 15-11-2019 Heard Mr. Prakash Chandra, learned Advocate for

the petitioner and Mr Sunil Kumar Verma, learned Advocate

for the opposite party No. 1.

The petitioner has challenged the order dated
04.06.2014 passed by the learned Judicial Magistrate-Ist
Class, Muzaffarpur in connection with Complaint Case No. C-
2596 of 2012, whereby cognizance has been taken under



Sections 417 and 504 of the Indian Penal Code (*in short I.P.C.*).

A complaint was lodged by the complainant/opposite party No. 2 that on the asking of the petitioner and another, a land belonging to someone else was shown to them by the complainant/opposite party No. 2 for it to be purchased by them. Admittedly, some money was paid by the petitioner and another to the owner of the land, but because the entire agreed amount was not paid by the petitioner and another, the transaction could not be completed and the property could not be conveyed. On demand of money by the petitioner/accused persons, initially the amount was attempted to be returned through cheque. Later, on the demand of the accused persons/petitioner, cash was given to them on the assurance that the cheque which has been issued by the complainant/opposite party No. 2 and his associate would be returned. The allegation, therefore, is that the petitioner pocketed the cash amount but did not return the cheque and thereby, committed an act of cheating and also indulged in hurling abuses and assault



on the complainant/opposite party No. 2, thereby attracting the offence under Section 504 of the I.P.C.

Learned counsel for the petitioner has drawn the attention of this Court to the fact that the cheque issued by the complainant/opposite party No. 2 could not be honored and hence a complaint under Section 138 of the Negotiable Instruments Act was filed which is pending adjudication before a competent Court of law.

It has also been pointed out that in the solemn affirmation, the complainant/opposite party No. 2 has given a vague statement that he had initially given a cheque of Rs. 4,00,000/- and later, gave the amount in cash, but the cheque was not returned. Such vague statement ought not to have been relied upon by the learned Magistrate, more so, when he has himself stated that in the notice which was issued to him in a case under Section 138 of the Negotiable Instruments Act, he had appeared and had given his explanation. It has, therefore, been submitted that the present case is only to create a defense, so as to rebut the presumption of debt/liability against the petitioner for the



complainant/opposite party No. 2 to have issued a cheque to him.

Apart from this, it has also been pointed out that the evidence of three other prosecution witnesses brought on behalf of the complainant/opposite party No. 2 also is based on hearsay information and reflects only vague statement with respect to deposit of cash. There is no date provided in the complaint petition or in the solemn affirmation as to when the cash amount was paid. It also does not appear to reason that cash amount would be given without taking back the cheque from the petitioner.

The entire prosecution arising out of the complaint appears to be *mala fide* and only for the purposes of creating a defense in the check dishonour case. Apart from this, the allegation of hurling abuses is also very vague and no specific accusation has been leveled.

No offence thus under Section 417 or Section 504 of the I.P.C. can at all be said to have been made out.

For the aforesaid reasons, this Court is of the view that in order to secure the *ends of justice*, the order dated



04.06.2014 be quashed and the entire criminal prosecution
be set-aside.

The order of cognizance is, accordingly, set-aside
and consequently the entire criminal prosecution arising out
of the aforesaid complaint is also quashed.

The petition stands allowed.

(Ashutosh Kumar, J)

Praveen-II/-

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