IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5658 of 2015

Arising Out of PS. Case No.-229 Year-2012 Thana- DINARA District- Rohtas

==

1. Sakhichand Gupta Son of Late Raghubir Ram
2. Kallu Gupta Son of Jagnarayan Gupta
3. Saroj Kumar Son of Sakhichand Gupta
4. Manoj Kumar Son of Sakhichand Gupta All resident of Mohalla - Basti More, P.S. - Sasaram T, District - Rohtas at Sasaram.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Jai Prakash Gupta Son of Sri Ramji Sah, Resident of Village - Dinara, P.S. - Dinara, District - Rohtas at Sasaram presently proprietor of Sri Sainath Trading Company, Dinara, District - Rohtas.

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s	:	Mr. Sada Nand Ray with Mr. Manoj Kumar, Advocate
For the State	:	Mr. Madan Kumar, APP
For the Opposite Party/s	:	Ram Chandra Singh with Mr. Jitendra Kumar Singh and Ms. Dimpal Kumari, Advocates

==

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 15-05-2019

Heard learned counsel for the petitioners; learned APP for the State and learned counsel for the opposite party no. 2.

2. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

> *" That this is an application for quashing of the order dated 25.02.13/04.03.2013 passed by the learned S.D.J.M., Bikramganj, District: Rohtas in Dinara P.S. Case No. 229/12 (G.R.No. 1384/12), by which the learned court below*

was pleased to take cognizance for offence under section 420, 406 of I.P.C. and 138 of N.I. Act against the petitioners.

3. The allegation in Dinara P.S. Case No. 229 of 2012, filed by the opposite party no. 2 against the petitioners is of cheating him of Rs. 7,41,003/-. It has been alleged that the opposite party no. 2 was working for petitioners no. 3 and 4 and after leaving the same, the petitioner no. 4 is alleged to have owed Rs. 7,41,003/- to the opposite party no. 2, for which two cheques totalling Rs. 7,00,000/- were given by the petitioner no. 4 to the opposite party no. 2, but on presentation to the Bank on 11.09.2012, the same was returned without payment. It was alleged that the opposite party no. 2 tried calling the petitioner no. 4 but when there was no response he went to the office where petitioners no. 1, 2 and 3 stated that petitioner no. 4 had gone out for collecting money and within 8-10 days the money would be returned. Further, it is alleged that when the opposite party no. 2 went after 10 days, the petitioners no. 1 to 3 were there and he came to know that the petitioner no. 4 had taken away money from many other persons and had fled away. It is alleged that the petitioners no. 1, 2 and 3 started fighting, abusing and petitioner no. 1 even got *lathi* and *danda* and threatened the opposite party no. 2 to go away otherwise he would be beaten up.

4. Learned counsel for the petitioners submitted that the law does not permit filing of a police case for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act'). It was submitted that under Section 142 of the N.I. Act, only a complaint can lie before the Court but not an FIR before the police. It was further contended that the law further requires that there should be notice given to the defaulter party within 30 days which has not even been mentioned in the FIR and thereafter if the payment is not made within 15 days of notice being received by the person issuing the cheque, a complaint has to be filed within 30 days thereof. Further, learned counsel submitted that at least with regard to petitioners no. 1, 2 and 3, there is neither allegation of any dealing with them nor the cheques were issued by them, as the same is confined to the petitioner no. 4. It was submitted that in such view of the matter, the petitioners no. 1, 2 and 3, being related to the petitioner no. 4, cannot be a ground to prosecute them criminally when they had no connection with the dealings between the petitioner no. 4 and the opposite party no. 2, issuance of cheques and subsequent non-encashment of the said cheques. Learned counsel submitted that, at best, the allegation against them is that they had threatened, abused and fought with the opposite

party no. 2 when he had gone to get his money for the cheques which were not honoured. Learned counsel submitted that the order impugned taking cognizance under Sections 420 and 406 of the Indian Penal Code are totally not applicable as far as petitioners no. 1, 2 and 3 are concerned. Even otherwise, it was submitted that against the petitioner no. 4 also, no ingredients for offence punishable under such sections are made out. However, on a direct query of the Court as to how against petitioner no. 4, ingredients of offence under Sections 406 and 420 of the Indian Penal Code are not made out, inasmuch as, as per the allegation, certain amount of money of the opposite party no. 2 was due with the petitioner no. 4, which was not returned and the allegation is that it was dishonestly used and, thus, the ingredients in the defining Section of 406 of the Indian Penal Code, i.e., Section 405 of the Indian Penal Code, such conduct is covered, and further with regard to Section 420 of the Indian Penal Code, the definition under Section 415 of the Indian Penal Code of cheating and in the present case where the allegation is that the opposite party no. 2 had worked for the petitioner no. 4 and from him over Rupees Seven Lakhs was due and not returned and in fact two cheques given to the opposite party no. 2 were not honoured, clearly making out offence punishable under Section 420 of the Indian

Penal Code; learned counsel for the petitioners was not in a position to meet the query of the Court.

5. Learned APP and learned counsel for the opposite party no. 2 submitted that all the petitioners are family members and were aware of the dealings between the petitioner no. 4 and the opposite party no. 2 and, thus, cannot be said to be innocent and have to take responsibility for non-return of the due money of the opposite party no. 2. It was submitted that the petitioners no. 1, 2 and 3 had also shielded the petitioner no. 4 and, thus, they are equally liable to be punished. However, on a direct query of the Court to learned counsel as to how petitioners no. 1, 2 and 3 can be charged with the offence punishable under Sections 406 and 420 of the Indian Penal Code as also Section 138 of the N.I. Act when there is no allegation of any dealing or entrustment or cheating against them and only cosmetic allegation is that they had fought and threatened and abused the opposite party no. 2 when he had gone to ask for return of money from the petitioner no. 4, for which the Court below has not taken cognizance; learned counsel were not in a position to meet such query.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for partial interference has been made out.

7. As has rightly been submitted by learned counsel for the petitioners, in the entire FIR, there is no allegation with regard to petitioners no. 1, 2 and 3 having any role in non encashment of the two cheques in question. Further, in the FIR itself it has been stated and from the copy of the cheques, which are said to have bounced, annexed with the application, it is clear that it was only the petitioner no. 4, in his individual capacity, who had issued the same. Moreover, the only allegation against the petitioners no. 1, 2 and 3 being that they had abused, fought and threatened the opposite party no. 2, but for which cognizance has not been taken and which has also not been challenged by the opposite party no. 2, the criminal prosecution against them would clearly be an abuse of the process of the Court. Thus, in the considered opinion of the Court, the order taking cognizance under Sections 420 and 406 of the Indian Penal Code and 138 of the N.I. Act cannot be sustained, as far as petitioners no. 1, 2 and 3 are concerned.

8. Though the Court finds that *prima facie*, ingredients for taking cognizance under Sections 406 and 420 of the Indian Penal Code are available before the Court and such order, as far as it relates to petitioner no. 4, does not suffer from any legal or factual infirmity, but with regard to Section 138 of the N.I. Act, the contention of learned counsel for the petitioners is correct that for

such grievance, only remedy available is filing complaint before the Court and not an FIR before the police. Thus, as far as taking of cognizance against the petitioner no. 4 under Section 138 of the N.I. Act is concerned, the same also stands quashed.

9. In the result, the application stands disposed off with the entire criminal prosecution, including the order impugned, against the petitioners no. 1, 2 and 3 being quashed and with regard to petitioner no. 4, the case being restricted to cognizance under Sections 406 and 420 of the Indian Penal Code only.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	
U	
T	