

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64203 of 2019

Arising Out of PS. Case No.-128 Year-2019 Thana- KALYANPUR District- East Champaran

Satish Chandra @ Satish Chandar @ Gautam @ Chandan Singh, Son of Subhash Prasad Singh, Resident of Village- Siswa Patwa, P.S.- Kalyanpur, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sudist Debey, Son of Late Dabunand Dubey Resident of Village- Mananpur, P.S.- Kalyanpur, District- East Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ansul- Advocate
For the State	:	Mr. Nirmal Kumar Sinha- A.P.P.
For the Complainant	:	Mr. Krishna Kant Singh- Advocate

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL ORDER

13 20-10-2020 Heard learned counsel appearing for the petitioner, learned Additional Public Prosecutor appearing for the State as well as learned counsel appearing for the complainant.

Petitioner apprehends his arrest in connection with Kalyanpur P. S. Case No.128 of 2019 arising out of Complaint Case No.363 of 2019 registered for the offences punishable under Sections 420, 406 of the I.P.C. and Section 138 of the N.I. Act.

Originally, informant filed complaint case bearing Complaint Case No.363 of 2019, which was sent to concerned police station and, thereafter, the present case was lodged.



The accusation against the petitioner is that he took huge amount from the informant in the name of starting brick-kiln business, but he did not start the above stated business and when the informant demanded his money, the petitioner issued cheques amounting to Rs.36,00,000/- and when the aforesaid cheques were presented before the concerned Bank, the said cheques became bounced due to non-availability of sufficient fund in the account of the petitioner.

At the very outset, learned counsel appearing for the petitioner raised legal question that the F.I.R. for the offences punishable under the Negotiable Instruments Act is not maintainable, but in course of hearing, learned counsel for the petitioner fairly conceded this fact that if, for the same set of facts, the offences of Negotiable Instruments Act as well as other laws are made out, the F.I.R. can be registered for the said offences. Therefore, in view of the aforesaid submission, I do not think it proper to discuss in detail the above stated question raised by learned counsel for the petitioner.

Learned counsel for the petitioner further submits that no case under Sections 406 and 420 of the I.P.C. is made out, because it is admitted case of the informant that petitioner took loan from informant to start brick-kiln business. Learned



counsel for the petitioner further submits that the contents of complaint petition (written report) do not disclose this fact that from the very inception of the transaction, the intention of the petitioner was to cheat the informant. He further submits that even if, it assumed that the cheques were issued by the petitioner, then also neither Section 420 of the I.P.C. nor Section 406 of the I.P.C. is made out except the offence of Section 138 of the Negotiable Instruments Act.

Learned counsel for the petitioner further submits that no doubt, the petitioner does have criminal antecedent of several cases, but as a matter of fact, all the cases as mentioned at Para-3 of the petition as well as supplementary affidavit are the result of dispute of the business transaction and, therefore, it is obvious that except the cases of Negotiable Instruments Act, no other case has been filed against the petitioner.

On the other hand, learned counsel appearing for the complainant, vehemently, opposed the prayer for anticipatory bail of the petitioner submitting that the contents of the complaint petition (written report) itself go to show that from the very inception of the transaction, the intention of the petitioner was to cheat the informant, because he took huge



amount from the informant in the name of starting brick-kiln business, but he never started any business nor returned the amount and when he was pressurized by the informant, he issued cheques knowing this fact that he had no sufficient fund in his bank account and, therefore, the aforesaid fact clearly establishes that petitioner had intention to cheat the informant.

Learned counsel for the informant further submits that the petitioner has not only cheated the informant, but several persons have also been cheated by the petitioner and several persons have lodged criminal cases against the petitioner. He further submits that earlier, petitioner had suppressed his criminal antecedent and when the informant brought the aforesaid fact to the notice of this Court by filing counter-affidavit, the petitioner accepted his criminal antecedent and brought the same on record by filing supplementary affidavit.

Having heard the contentions of both the parties, I have gone through the record along with materials available on record. It is admitted case of the informant that petitioner took the amount 'in question' from victim to start business of brick-kiln, but he did not start the said business. The informant has, nowhere, stated in complaint petition (written



report) that from the very beginning of taking amount, the intention of the petitioner was to cheat him. Furthermore, no doubt, petitioner does have criminal antecedent of several cases, but it appears that almost all the cases have been filed for dishonour of cheques. Therefore, it appears that the dispute between the petitioner and informant arose on account of business transaction.

Considering the aforesaid facts and circumstances of the case as well as submissions of the parties, this anticipatory bail petition is allowed and it is ordered that petitioner, in the event of his arrest/ surrender within six weeks from the date of receipt of this order to the Court concerned, shall be released on bail on furnishing bail bonds of Rs.1,00,000/- (One Lac) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, East Champaran, Motihari in connection with Kalyanpur P. S. Case No.128 of 2019 arising out of Complaint Case No.363 of 2019, subject to conditions as laid down under Section 438(2) of the Cr.P.C.

(Hemant Kumar Srivastava, J)

vikash/-

U		T	
---	--	---	--

