IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34392 of 2019

Arising Out of PS. Case No.-890 Year-2018 Thana- PATNA COMPLAINT CASE District- Patna

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AJAY KUMAR Son of Shri Gore Lal Singh Resident of Village - Mirchaiya Tola, Gulzarbagh, P.S.- Alamganj, Dist.- Patna and Permanent resident of New area, Nawada, P.S. and Dist. - Nawada.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Anil Kumar Son of Shri Nawal Kishor Sharma Resident of Village - New Area, P.S.- and Dist.- Nawada. Presently residing at 2nd Floor, R.V. Enclave, R.M.S. Colony Kankarbagh, P.S.- Kankarbagh In the Dist.- Patna.

... ... Opposite Party/s

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Appearance

For the Petitioner/s : Mr. Nivedita Nirvikar, Sr. Adv.
Mr. Arya Achint, Adv.
For the State : Mr. Choubey Jawahar, APP
For the informant : Mr. Surya Prakash Singh, Adv.
Mr. Rajesh Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

15 22-09-2021 Heard learned Senior Counsel for the petitioner, learned A.P.P for the State and learned counsel for the opposite party no.2 through video conferencing.

The instant application for anticipatory bail has been filed by the petitioner apprehending his arrest in connection with Complaint Case No. 890(c) of 2018 wherein cognizance has been taken under section 406 of the Indian Penal Code and section 138 of the Negotiable Instruments Act.

As per the prosecution case, the petitioner along with his wife who were running an auto parts retail shop, enticed the complainant to invest capital in the said business. Initially, the accused persons returned the investment with benefit. Under influence of the accused persons, the complainant invested a sum of Rs.26 lacs. The accused started taking dishonest steps, started to avoid the complainant and refused to give share in the business profit. On the complainant asking for return of his capital invested in the business, the same was not returned, however, the petitioner issued three post dated cheques of a total amount of the amounts of Rs.5 lacs, Rs.10 lacs and Rs.10 lacs. On the complainant depositing the cheques in his bank account, the two cheques for Rs.5 lacs and Rs.10 lacs were dishonoured and returned by the Bank with return memo stating 'stop payment by drawer'. Subsequently, the complainant got information that the accused were not going to make payment and had the intention to cheat the complainant from the very beginning. The complainant got a legal notice dated 2.2.2018 served. It is stated that recently the accused got some documents forged and sent to the witness no.6 and thereafter to witness no.5 from which it was clear that the accused had intention to cheat and commit fraud on the complainant. Hence the complaint.

After enquiry, learned trial Court by order dated

6.6.2018 was pleased to take cognizance under section 406 of the Indian Penal Code and section 138 of the Negotiable Instruments Act.

It is submitted by leaned Senior Counsel for the petitioner that the allegations as levelled in the complaint are false and concocted. The petitioner has been falsely implicated in the case. Initially, the complainant invested the amount but subsequently wanted to withdraw the amount invested in the business which the petitioner had assured to return, however taking advantage of the situation, he also collected money from the market for which dispute arose between the parties. The complainant and his person Mukesh Kumar did not agree for accounting and instead forcibly entered the shop and without the consent of the petitioner sold different parts and goods kept in the shop. This led to the petitioner filing an application on 17.12.2018 before the S.H.O of Gandhi Maidan Police Station. However, in view of the connivance of the police authorities the F.I.R. was not registered. Cr.WJC no.430 of 2018 was filed in the Patna High Court. The case of the petitioner is that while comparing the entire stock, it transpired that a total sum of Rs.18,83,407/ was misappropriated from the shop and the petitioner has brought on record as Annexure-2 series the receipt showing the amount received by the complainant. It is further submitted that the complainant being a strong person forcefully got three cheques signed for which the petitioner filed Complaint Case No.2883 of 2018 against the complainant. Copy of the complaint petition having been brought on record as Annexure-3. It is submitted that on the petitioner having informed the Senior Superintendent of Police, Patna as well as the S.H.O of the Gandhi Maidan Police Station, Patna about the complainant taking over the shop with the entire goods, although the complainant returned the keys of the shop, however, the same was done after the goods worth Rs.18 lacs was sold by the complainant. Thus, it is the case of the petitioner that the dispute is one of accounting in the business being run by the petitioner and has been given a different colour by filing the instant complaint case. The petitioner has no criminal antecedent. Learned Senior counsel for the petitioner in support of her contention relies on the judgment of the Hon'ble Supreme Court dated 30.7.2019 in Cr. Appeal No.1160 of 2019 (G.J.Raja versus Tejraj Khurana) and judgment of the Hon'ble Bombay High Court dated 14.3.2019 in Cr. Writ Petition. no.258 of 2019 (Ajay Vinod Chandra Sah versus the State of Maharastra and Anr.). It is submitted that as per the direction of this Court, the petitioner having deposited a sum of Rs.3 lacs, being 20% of the total cheque amount of Rs.15 lacs, the provisional bail granted to the petitioner be confirmed.

The application for anticipatory bail is opposed by learned APP for the State and learned counsel for the opposite party no.2.

It is submitted by learned counsel for the opposite party no.2 that from perusal of the contents of the complaint it would clearly be evident that the petitioner has not only cheated the complainant but it is a clear cut case of criminal breach of trust as also one under section 138 of the Negotiable Instruments Act. The submissions made on behalf of the petitioner are false, incorrect and malicious only with the intention to avoid payment of the amount mentioned in the cheque which is to the tune of Rs.15 lacs. It is further submitted that even subsequent thereto, a third cheque for Rs.10 lacs given by the petitioner was also dishonoured, although the same is not part of the instant complaint. The petitioner be directed to pay the total amount of Rs.25 lacs. The intention of the petitioner to cheat would clearly be evident from the facts that inspite of the opportunities being given both by the learned Court below and also by this Court, no steps were taken by the petitioner to settle and the matter. From the recital in the petition itself including the contents of the complaint at Annexure-3 to the petition and the stand of the petitioner at different places, the defence of the petitioner is at variance with each other, thus it is not a case for grant of anticipatory bail. In support of his contentions learned counsel for the complainant relies on the judgments in the case of Uttam Ram Versus Devinder Singh Hudan and another [2020 (1) BLJ 180(SC)] and M/S Womb Laboratories Pvt. Ltd. Versus Vijay Ahooja and another [2020 (1) BLJ 447 (SC)]. It is thus submitted that the application be rejected.

Having heard learned counsel for the parties and taking into consideration the submissions made as also the materials on record, it transpires that the dispute between the parties is one of accounting in business. Further, in view of the provisions of section 143A of the Negotiable Instruments Act, as directed by order dated 28.5.2019, the petitioner paid a sum of Rs.3 lacs being 20% of the cheque amount to the opposite party no.2. By order dated 28.5.2019 the petitioner was enlarged on provisional bail in the instant case,

Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case, the nature of allegations, the compliance of the directions of this Court to pay 20% of the cheque amount to the complainant and there being no allegation during pendency of this application of misuse of the privilege of bail by the petitioner, the provisional bail granted to the petitioner by order dated 28.5.2019 in connection with Complaint Case No. 890(c) of 2018 pending in the Court of learned Additional Chief Judicial Magistrate-XVI, Patna, is hereby confirmed.

The application stands disposed of.

(Partha Sarthy, J)

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