IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45438 of 2018

Arising Out of PS. Case No.-2509 Year-2012 Thana- PATNA COMPLAINT CASE District- Patna

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Ranjit Kumar Son of Bipin Bihari Verma Resident of Mohalla- Ghasiari Gali, Dewan Mohalla- Police Station- Khajekalan, District- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Mr. Shailendra Kumar Son of Sri Ram Sharan Pandey Resident of Mohalla- Hanuman Nagar, P.S. - Patrakarnagar, District- Patna.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Lakshmi Kant Sharma
For the Opposite Party/s : Mr.Sir Pawan Kumar Chaurasiya

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT
Date : 21-07-2022

This application has been filed for quashing of order dated 31.05.2018 passed in Criminal Revision No.764 of 2016 by learned Fast Track Court II, Patna whereby and whereunder the revisional court has upheld the framing of charge under Section 406 and 418 of the Indian Penal Code against the petitioner.

2. The brief facts of the case giving rise to the present petition are that as per the complaint case this petitioner introduced the complainant to other co-accused persons who were the executives of the company and were conducting affairs of the Branch Office of the company. It is further alleged that on persuasion and inducement of this petitioner, the complainant

invested huge amount of money and also got invested lakhs of rupees by other customers in that company. It is further case of the complainant that accused persons executed the agreement with the complainant stating therein that they received a sum of Rs. 45 lakhs on which Ajay Pratap Narain Sinha and this petitioner put their signature on 30.05.2011. It is further alleged that the complainant issued an undated cheque of Rs. 24 lakhs in the name of complainant and also entered into an agreement with him on 16.07. 2011, but when the said cheque was presented in the bank the same was not honoured due to insufficient fund. It is further alleged that all the aforesaid payments were made by the complainant either at his own residence or in the office of the company or at the residence of this petitioner. Thereafter, it is alleged that other co-accused persons issued several cheques but all of them dishonoured due to insufficient fund. Thus, all the accused persons including this petitioner cheated and misappropriated an amount of Rs. 24 lakhs of the complainant.

3. The court below after carefully perusing the complaint petition as well as witnesses along with complainant examined during inquiry took cognizance and framed charges against this petitioner and others under Sections 406, 418 of the

Indian Penal Code and section 138 of the Negotiable Instruments Act.

4. Petitioner filed petition under Section 245 of the Criminal Procedure Code before the court below and the trial court rejected the discharge petition of the petitioner holding that petitioner is the person who introduced the present complainant and others to the company and got invested huge money and as such, petitioner cannot escape from his liability and thus, petition filed by the petitioner under Section 245 Code of Criminal Procedure was dismissed.

5. Being aggrieved petitioner preferred Criminal Revision No. 764 of 2016 before the Court of Fast Track Court II, Patna which after hearing the parties partly dismissed the petition and upheld the framing of charge under Section 406, 418 of the Indian Penal Code against the petitioner.

6. It is submitted on behalf of petitioner that from bare perusal of the complaint petition it would appear that this petitioner has neither received any money in his personal capacity from the complainant nor on behalf of company. It is further submitted that petitioner being staff of the company neither executed any agreement nor issued any cheque which is alleged to be dishonored by the bank. Petitioner being employee

of the company simply prepared the document at the behest of company and on the instruction of other co-accused persons. As such, there is complete absence of ingredients of section 406 or 418 of the Indian Penal Code. It is next submitted that both the court below have committed gross error and without application of mind dismissed the discharge petition of the petitioner and as such, impugned orders are not sustainable in the eye of law and are fit to be set aside. It is next submitted that impugned orders are nothing but abuse of process of law.

7. On the other hand counsel for the State opposed and submitted that the court below after carefully perusing the complaint petition as well as the statement of witnesses arrived at a *prima facie* conclusion and framed charges against the accused persons including the petitioners under Sections 406, 418 of the Indian Penal Code against the petitioner and there is no illegality or irregularity in the impugned order and have rightly dismissed the discharge petition filed by this petitioner. At this stage there is no need to interfere in the impugned order.

8. Heard rival submissions and perused the materials available on record, it is settled law that it is not necessary that a complainant should verbatim reproduce in the body of the complaint all the ingredients of the offence he is alleging nor is

it necessary that the complainant should state in so many words that the intention of the accused was dishonest and fraudulent. The ingredients of an offence cheating are :-

> *(i) there should be fraudulent or dishonest inducement of a person by deceiving him,*
> *(ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or*
> *(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and*
> *(iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.*

9. In this complaint there is specific allegation that this petitioner persuaded and induced the complainant to invest in the company which was later on, mis-appropriated by them. They also entered into agreement and issued several cheques, but all of them got dishonoured due to insufficiency of fund.

10. At this stage the court below is not required to examine and investigate the probable defence of the petitioner. In the opinion of this court, the trial court as well as the revisional court have not committed any illegality or irregularity. The allegations in the complaint are sufficient to constitute offence under Sections 406 and 418 of the Indian Penal Code. As a consequence, court below shall proceed in the

matter in accordance with law in regard to the complaint filed by the complainant so far as offence under Sections 406, 418 of the Indian Penal Code.

11. Accordingly, this quashing petition stands dismissed being devoid of merit.

(Prabhat Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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