

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86012 of 2019

Arising Out of PS. Case No.-341 Year-2016 Thana- MOHANIYA District- Kaimur (Bhabua)

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Vinay Mishra @ Pintu Mishra Son of Vijay Mishra @ Vijay Shankar Mishra
Resident of Village - Atarwalia, P.O.- Kathej, P.S.- Mohania, District- Kaimur
(Bhabua)

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Uma Shankar Choubey Son of Late Bashishtha Narayan Choubey Resident
of Village - Tulsipur, P.O.- Bamhour (Khas), P.S.- Mohania, District- Kaimur
(Bhabua)

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Pathak
For the Opposite Party/s : Mr.Ashok Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

3 07-07-2022 This is an application for quashing of order dated

17.07.2019 passed by learned Additional Sessions Judge III,
Kaimur at Bhabua, in Criminal Revision No. 153 of 2018 in
connection with Mohaniya PS Case No. 341 of 2016 registered
under Section 409 of Indian Penal Code whereby and
whereunder the application under Section 239 of the Code of
Criminal Procedure has been rejected.

The brief facts giving rise to this application is that
the informant Umashankar Chaubey supplied 450 quintals of
rice worth Rs. 6,30,000/- and 168 quintals of wheat worth Rs.
2,54, 586/- on 20.01.2014 and 22.04.2014 respectively to the
petitioner. When the informant demanded money for the goods



supplied from the petitioner, the petitioner refused to make payment and threatened the informant of dire consequence. Thereafter, informant lodged FIR on 03.07.2016 under Section 409 of the Indian Penal Code against the petitioner. The police after investigation, submitted chargesheet under Sections 406, 420 and 506 of the Indian Penal Code. The court below took cognizance under Sections 420, 409, 509 of the IPC against the petitioner. The cognizance order was not challenged by the petitioner, but at the stage of framing of charge the petitioner move a discharge application under Section 239 of the Cr.P.C. which was dismissed by the lower court and against that order, petitioner moved before the court and revision petition was filed and after hearing the parties, learned Additional Sessions Judge III, Kaimur at Bhabua passed the impugned order.

Counsel for petitioner contends that impugned order is arbitrary and based on no material. It is next contended that FIR is ante dated and no chit of paper has been adduced on behalf of informant in support of the allegations made in the FIR. As such, even if the allegations levelled in the FIR are taken to be true prima facie no case is made out against the petitioner. It is merely a case of sale and purchase of goods and no corresponding offence is situated.



However, counsel for informant opposed the contention made on behalf of petitioner and submits that after perusing the FIR and materials available on record the court below has taken cognizance and there are sufficient material to frame charge against petitioner. At this stage reliability and adequacy of the materials is a matter of trial.

Heard counsel for the parties.

It is settled law that at this stage the court has to sift and weigh the evidence for a limited purpose of finding out whether or not a prima facie case against the accused has been made out. Merit and demerit of the allegation made in the FIR cannot be seen at this stage. Plea of defence cannot be seen at this stage.

The application for quashing of the order dated 17.07.2019 passed by the learned Additional Sessions Judge III, Kaimur at Bhabua, in Criminal Revision No. 153 of 2018 is accordingly, rejected.

(Prabhat Kumar Singh, J)

vinita/-

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