IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49929 of 2015

Arising Out of PS. Case No.-1512 Year-2014 Thana- DARBHANGA COMPLAINT CASE District- Darbhanga

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Sunil Kumar Jha, Son of Chandrabali Jha @ Lal Babu Jha, R/o Supaul Bazar, P.S. - Biraul, District - Darbhanga

... ... Petitioner

Versus

1. The State of Bihar.
2. Mamta Choudhary, W/o Shri Ram Subhag Chaudhary, R/o Mohalla - Sarswati Vihar, P.S. - Sadar, Dist. - Darbhanga.

... ... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Prabhat Kumar, Advocate

For the Opposite Party/s : Mr. B.N. Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date : 20-09-2023

Heard learned counsel for the parties.

2. This is an application seeking setting aside of the order dated 02.05.2015 passed by learned Judicial Magistrate, 1^{st} Class, Darbhanga in Misc. Case No. 195 of 2014/ Complaint Case No. 1512 of 2014 whereby and whereunder the learned Magistrate has taken cognizance of the offence under Section 138 of the Negotiable Instrument Act and directed to issue summons to the petitioner.

3. On perusal of the complaint petition, it appears that the petitioner was known to the husband of the complainant. He had allegedly taken Rs.3,55,040/- from the complainant on 10.09.2012 and when the amount was not returned, several reminders were given by the complainant. It is stated that ultimately on 27.02.2013, the petitioner issued three antedated cheques and assured the complainant that all the cheques would be honoured on presentation.

4. It further appears that when the complainant presented the cheque dated 28.07.2014 for the payment of Rs.1,12,000/-, the same was dishonoured as the drawer had issued an instruction to the Banker to stop the payment. In this connection, the complainant sent a legal notice on 13.08.2014 reminding the amount but the petitioner gave an evasive and baseless reply to the legal notice and refused to pay the amount.

5. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case, he is innocent and the present complaint has been made with malafide intention. It is submitted that the complainant had a house situated in Mohalla- Saifullaganj and there was a contract between the petitioner and the husband of the complainant that the said house would be let out to the petitioner for establishment of his personal office for the business of Mutual Fund after making renovation and beautification of the said house on the advance given by the petitioner.

6. It is submitted that the husband of the complainant had also demanded a security amount from the petitioner for letting out the house to the petitioner and, thus, pursuant to the said contract, the petitioner had given Rs.61,000/- cash in installments to the husband of the complainant after withdrawing the said amount from the ATM.

7. It is submitted that the petitioner on the instruction of the husband of the complainant had deposited Rs.93,000/- in the HUF account of the husband of the complainant through Cheque No. 905171 dated 28.12.2012. The petitioner had also issued three antedated cheques in the name of the complainant according to the instruction of the husband of the complainant but when the renovation and beautification of the house was not started by the husband of the complainant even after receiving the amount of Rs.1,54,000/- as per contract, the petitioner asked the husband of the complainant either to perform the contract or return the cheques.

8. In paragraph '13' of the complaint petition, it is stated that the petitioner instructed the United Bank of India on 15.02.2013 to stop payment of the cheque dated 28.02.2013 and the same request was made by the petitioner to the Axis Bank and it was intimated to the complainant.

9. Learned counsel for the petitioner submits that in these facts, the complaint contains a concocted story only with a malafide intention to misappropriate the amount of Rs.1,54,000/-.

10. Learned APP for the State has opposed this application.

11. This Court has gone through the materials available on the record and the submissions of the parties. On a bare perusal of the complaint petition, it appears that the cheque was issued by the petitioner in the name of the complainant which stood dishonoured in want of funds. In fact, it is the stand of the petitioner himself that he had issued the three cheques and the cheque in question was one of them. There is an admission of the petitioner before this Court in paragraph '13' of the petition that he had instructed the United Bank of India on 15.02.2013 to stop payment of the cheque.

12. Whatever be the justifications from the point of view of the petitioner behind stopping payment of the cheque, this Court at this stage cannot go into such justifications which are the matters of evidence and may only be taken care of in course of inquiry/trial of the case. There being an admission that the encashment of the cheque was stopped by this petitioner, a prima-facie case under Section 138 of the Negotiable Instrument Act is made out and in such circumstance, if the learned Magistrate has taken cognizance and decided to issue summons, this Court finds no fault with the same.

13. Even otherwise, it appears that this application has remained pending in this Court since the year 2015 without there being any stay of the impugned order but learned counsel for the petitioner is not aware of the present status of the case.

14. Be that as it may, this application is dismissed.

(Rajeev Ranjan Prasad, J)

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CAV DATE	
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