

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54195 of 2023

Arising Out of PS. Case No.-4378 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

=====

SURESH SINGH Son of Late Jagan Singh Resident of 3/303, Miss Gill
Compound, Marris Road, Koil, Distt. - Aligarh, Uttar Pradesh - 202001

... .. Petitioner/s

Versus

1. The State of Bihar
2. Devendra Nath Nayak Son of Sri Parmeshwar Nayar Resident of Shanti Path
Mahadeo Puri, P.O and P.S. - Gardanibagh, Patna, Distt. - Patna

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Prince Kumar Mishra

For the Opposite Party/s : Ms.Anita Kumari

=====

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 06-12-2023 1. Heard learned counsel for the petitioner, learned

APP along with learned counsel for the OP No. 2

2. The learned counsel for the petitioner submits that

the present application has been filed seeking quashing of the

order dated 27-2-2017 passed by the learned ACJM-VIII, Patna

in Complaint Case No. 4378(C) of 2013, whereby cognizance of

offence under Section 403 of the IPC has been taken.

3. The learned counsel for the petitioner submits that

what is not disputed rather stands admitted is that petitioner and

the OP No. 2 were having business relations. It is next submitted

that the OP No. 2 herein had issued Cheque No. 13277 dated 24-

7-2012 for an amount of Rs. 1,09,468/- which was presented for



encashment but bounced and the cheque was returned by a return memo of the Bank dated 31-7-2012.

4. It is further submitted that petitioner accordingly on 22-8-2012 issued a legal notice, which was replied by the petitioner on 10-9-2012, thereafter the petitioner filed Complaint Case No. 5007 of 2012 dated 24-9-2012 in the court of learned CJM, Aligarh, Uttar Pradesh.

5. The learned counsel submits the learned CJM, Aligarh, based on the material on record and the evidence, which came during the course of inquiry, took cognizance of the offence under Section 138 of the NI Act against the OP No. 2. It is further submitted that since the matter in between the petitioner and the OP No. 2 was compromised as the OP No. 2 had returned the amount to the petitioner for which the cheque was issued in cash as such the petitioner withdrew the Complaint Case No. 5007 of 2012, as would be evident from the order dated 9-2-2018 passed by the learned ACJM Aligarh (Annexure-P/10).

6. The learned counsel next submits that the petitioner had instituted Complaint Case No. 5007 of 2012 dated 24-9-2012 in which cognizance was taken by an order dated order dated 13-5-2013, thereafter the matter was compromised and the



complaint case No. 5007 of 2012 was withdrawn by an order dated 9-2-2018. It is submitted that the OP No. 2 had also instituted Complaint Case No. 4378 of 2013 in the court of learned CJM, Patna, in which cognizance was taken in the year 2017 on the allegation that while the OP No. 2 had gone to attend a meeting of the company with the petitioner on 2-1-2012 and when he came back, he realised that he had lost a cheque in the meeting based on which the Complaint Case No. 4378 of 2013 was instituted. It is submitted that the Complaint Case No. 4378 of 2013 was also instituted with respect to the cheque No. 13277 dated 24-7-2012 for which Complaint Case No. 5007 of 2012 was filed. The learned counsel next submits that it absolutely does not stand to reason that when the OP No. 2 himself admits that he attended the meeting on 2-1-2012 of the company where he lost his cheque, why the present complaint came to be instituted on 12-12-2013, when the petitioner had already instituted a case on 24-9-2012 with respect to the cheque in question as recorded hereinabove.

7. The learned counsel next submits that if the cheque of the OP No. 2 was lost and he had instituted Complaint Case No. 4378 of 2013 then where was the occasion for him to enter into a compromise with the petitioner, which led to withdrawal



of Complaint Case No. 5007 of 2012. It is also submitted that the Complaint Case No. 5007 of 2012 was withdrawn by an order dated 9-2-2018 but till that time also the OP No. 2 did not disclose to the petitioner that he had instituted the present complaint case.

8. The learned counsel thus submits that the present complaint case came to be instituted by way of defence and that too at a very belated stage as the OP No. 2 himself admits that he lost the cheque in a meeting dated 2-1-2012 but instituted the present complaint on 12-12-2013. The learned counsel next submits that OP No. 2 is trying to make out a case that the cheque in question for which Complaint Case No. 5007 of 2012 was filed, was lost and was a blank cheque with his signature on which the petitioner inscribed the amount and the date and thereafter presented it for encashment. It is next submitted that it absolutely does not stand to reason that a person, who has gone to attend a meeting and his cheque was lost, did not realise about the same and the realization came only after the Complaint Case No. 5007 of 2012 was instituted by the petitioner.

9. The learned APP along with the learned counsel the OP No. 2 opposes the submission of the learned counsel for the



petitioner but are not in a position to rebut the submission of the learned counsel for the petitioner that the present complaint case came to be instituted after much delay as recorded hereinabove and the parties had compromised which led to withdrawal of Complaint Case No. 5007 of 2012.

10. Considering the submission made by the learned counsel for the petitioner, the order dated the order dated 27-2-2017 passed by the learned ACJM-VIII, Patna in Complaint Case No. 4378(C) of 2013, whereby cognizance of offence under Section 403 of the IPC has been taken, is hereby quashed

(Satyavrat Verma, J)

SUMIT/-

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

